



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-05-257-11030

Office: BOSTON (HARTFORD)

Date: **SEP 24 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, Boston District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the applicant failed to establish that he had resided in the United States throughout the requisite period. Specifically, the director found that the applicant had two absences during the requisite period that each exceeded 45 days and, taken together, exceeded 180 days.

On appeal, counsel for the applicant stated that the applicant insists that he has been in the United States prior to January 1, 1982, he cannot remember his exact dates of travel, and he may have misstated the dates. Counsel also indicated that an affidavit confirming the applicant's presence in the United States was attached to the appeal, but the affidavit does not appear to have been attached. The AAO contacted counsel for the applicant on August 22, 2008 to request a copy of the affidavit asserted to have been submitted on appeal. Counsel provided a copy of an affidavit that had already been submitted, containing information only about the affiant and not mentioning the applicant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant failed to address the grounds for denial raised by the director with any additional information or documentation.

It is noted that the director erroneously considered an absence that occurred outside the requisite period when evaluating whether the applicant had continuously resided in the United States during the requisite period. One of the absences noted by the director occurred during the requisite period and exceeded 45 days, making the applicant ineligible for temporary resident status. Therefore, the director's error is harmless and his basis for denial is legitimate.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for denial. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.