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**U.S. Citizenship
and Immigration
Services**

41



FILE:



Office: LEE'S SUMMIT

Date:

FEB 27 2009

MSC-04-328-10427

IN RE:

Applicant:



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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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, Lee's Summit, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The applicant must establish entry into the United States before January 1, 1982, and continuous residence in the United States since such date through the date the application is considered filed pursuant to the CSS/Newman Settlement Agreements. Section 245A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(a)(2).

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted in the Notice of Intent to Deny (NOID) dated October 27, 2006 that the applicant provided sworn testimony during his interviews with an immigration officer on September 21, 2005 and October 26, 2006 that he first entered the United States during the summer of 1979 and traveled back and forth from the United States to Mexico from 1979 to early October 1981. The applicant also testified that since early October 1981, when his boss called him back to the United States, he traveled back and forth between Mexico and the United States, arriving in the United States at the end of March or early April and remaining until sometime in October, each year. The applicant testified that he would remain with his family in Mexico from October until late March or early April of the next year up until 1988, when he left agricultural work altogether. The applicant submitted an affidavit from his employer verifying that he was a seasonal worker. The director noted that the applicant admitted to being in Mexico on January 1, 1982 and November 6, 1986.

The director noted in the denial that the applicant admitted in his response to the NOID that his brief absences from the United States were approximately one to three months in duration; although he had earlier testified that his absences were seasonal in nature and lasted upwards of four months. The director also noted that the declaration submitted by [REDACTED] was very ambiguous and provided no meaningful proof of the applicant's eligibility. The director determined that the applicant's attempt to explain his multiple absences outside the United States as brief and casual was insufficient to overcome the grounds for denial. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has resided in the United States in a continuous unlawful status, except for brief absences, as he indicated on his Form I-687 application. He also asserts that when he went for his immigration interview he didn't know how to answer the immigration

officer's questions, and was afraid to say anything because he didn't want to get into any trouble. He further states that although he can't remember the length of his stays outside the United States, because he was employed in the United States, he could only stay for a period of time before having to return to work. The applicant resubmitted a copy of his Form I-687 application which shows that he stated "n/a" at part #32 where it asks him to list his absences outside the United States. The applicant does not submit any new relevant evidence on appeal. To meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

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 director's decision reveals that the director accurately set forth a legitimate basis for denial of the Form I-687 application. On appeal, the applicant has not provided any evidence to overcome the director's decision. Nor has he overcome, by his assertions, the discrepancies found in the record, which are the basis for the denial. The appeal must therefore be summarily dismissed.

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