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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: FEB 27 2010

MSC 05 213 10063

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.

Elizabeth McCormack

Perry Rhew
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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, finding that the applicant had not provided credible evidence to establish eligibility under section 245A of the Act. The director also noted in her decision that although the applicant's address had not changed, the NOID was returned to the district office on March 29, 2006 as undeliverable.

On appeal, the applicant asserts that he never received the Notice of Intent to Deny (NOID) and has no idea why the NOID was sent back to the district office as he has never changed his address. The applicant states that it was an error by the post office. The applicant also states that he received the notice of denial (NOD) and based on the NOD, he has filed an appeal.

The applicant requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was closed on March 3, 2009. (NRC2008071310). No additional evidence or brief has been received into the record.

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. The applicant on appeal provided no new evidence or explanation to overcome the reasons for denial of his application. The applicant states on appeal that he never received the NOID but his current address on the Form I-694, Notice of Appeal of Decision under Section 210 or 245A is the same address that is on the NOID and the NOD. The NOID was sent to the applicant certified mail and returned to Citizenship and Immigration Services as unclaimed on March 29, 2006. The applicant states on appeal that his address has never changed and that he received the NOD dated January 22, 2007. It appears that the applicant never went to the post office to pick up the NOID and therefore it was returned to the district office as being unclaimed. The applicant's failure to claim certified mail is not excused.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence and has not addressed the grounds stated in the director's denial. The appeal must therefore be summarily dismissed.

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