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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



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FILE: [REDACTED] Office: FRESNO  
MSC 06 098 19153

Date: JAN 11 2010

IN RE: Applicant: [REDACTED]

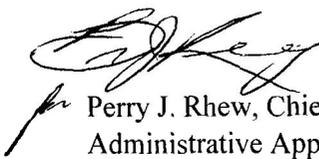
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
Perry J. 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, Fresno, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director denied the application because the applicant was found to have abandoned the application. The director noted that that a scheduling notice, dated August 4, 2006, was sent to the applicant at his last known address advising him to appear for an interview on August 21, 2006, but the applicant did not appear on that date and did not request that the appointment be rescheduled.

The regulation at 8 C.F.R. § 103.2(b)(15) provides generally that “[a] denial due to abandonment may not be appealed, though an applicant may file a motion to reopen under 8 C.F.R. § 103.5.” Under the LIFE Act applicants have no such motion rights. *See* 8 C.F.R. § 245a.20(c). But the regulation does give “the Service director who denied the application” the authority to “reopen and reconsider any adverse decision *sua sponte*.” *See id.*

On appeal, counsel for the applicant claims that the applicant did not receive any interview notice from the director. Counsel also states that the interview notice was delivered at his office on Friday “on last afternoon delivery 08/19/06,” and on August 21, 2006 he sent a request to reschedule the interview.

The record reflects, however, that the director mailed the interview notice to the applicant at his address of record, [REDACTED] and the notice was not returned as undeliverable. It is also noted that although counsel claims that he received the interview notice on the last afternoon delivery on Friday, August 19, 2006, counsel submitted what counsel purports to be a copy of an email message, dated August 18, 2007 10:22 AM, that contradicts counsel’s claim. The email message discusses the interview notice; yet, counsel claims that he did not receive the interview notice until late August 19, 2006, after the date of the email message. It is, therefore, questionable whether counsel is being candid about the date and time he received the notice of interview, and his failure to timely request rescheduling.

As stated in 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed. Since the denial in this case was based on the abandonment of the application, it may not be appealed. Therefore, the appeal will be rejected.

**ORDER:** The appeal is rejected.