

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

L1

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: JUL 06 2010

IN RE: Applicant:

[REDACTED]

APPLICATION: Application for Temporary Resident Status under 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.

[REDACTED]

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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

On September 12, 2006, the director issued a Notice of Decision denying the application on the ground that the applicant failed to establish his continuous unlawful residence in the United States during the requisite time period, in accordance with section 245A(a)(2) of the Immigration and Nationality Act (Act); the regulations at 8 C.F.R. § 245a.2(b)(1) and (h)(1); as well as the CSS Settlement Agreement, paragraph 11 at page 6, and the Newman Settlement Agreement, paragraph 11 at page 10. The only evidence of the applicant's residence in the United States during the requisite period (before January 1, 1982 to May 4, 1988) was a series of affidavits from acquaintances of the applicant – which the director indicated in a Notice of Intent to Deny (NOID), issued on May 12, 2006, were not sufficiently substantive and verifiable to establish the applicant's continuous residence in the United States during the years 1981-1988. Since the applicant did not reply to the NOID, the director denied the application for the reasons stated therein.

Counsel filed a timely appeal (Form I-694), asserting that neither he nor the applicant received the NOID. After pointing out that the applicant's address had not changed since the date of filing, counsel requested that a new NOID be issued and that the case be remanded to the New York District Office for further consideration on the merits. Counsel waived the right to submit a written brief or statement in support of the appeal.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

The AAO notes that the applicant's address on the NOID was indeed incomplete. While the street and number were correct, the NOID neglected to identify the applicant's apartment number. The attorney's address on the NOID, however, did accord with the address appearing on the Form G-28 submitted by counsel with the applicant's Form I-687 (application for temporary resident status) in December 2005. The AAO notes that a new Form G-28 submitted by counsel with the appeal in October 2006 shows a change of suite numbers, from 301 to 306, since December 2005. Counsel did not advise the AAO of this change of location, which may account for his alleged failure to receive the NOID issued in May 2006.

In any event, the AAO complied with counsel's request for reissuance of the NOID by sending copies of the NOID dated May 12, 2006 to the applicant and counsel on January 15, 2010. In a cover letter accompanying the NOID, the applicant and counsel were requested to respond to the NOID with any additional evidence or information that might be available within 30 days. The AAO advised that if no timely response was received, the appeal would be adjudicated based on the documentation of record.

No response was received from the applicant or counsel within 30 days of the NOID's reissuance, or any time thereafter. Thus, the evidence of record is unchanged from that which the director deemed inadequate at the time the NOID was originally issued in May 2006.

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

A review of the decision shows that the director accurately set forth a legitimate basis for denial of the application in 2006. The applicant has not claimed any specific error(s) in the director's decision, and has not presented any additional evidence of his continuous unlawful residence in the United States during the requisite period to qualify for temporary resident status in accordance with section 245A(a)(2) of the Act. The appeal must therefore be summarily dismissed.

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