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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  
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41

FILE: [REDACTED] Office: LOS ANGELES

Date:

MAR 21 2011

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:

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.

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, or *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 of the Los Angeles office. The Administrative Appeals Office (AAO) dismissed the applicant's appeal. The matter is now before the AAO on a motion to reopen/reconsider. The AAO will reject the motion.

The applicant filed a Form I-694, Notice of Appeal to the AAO. The appeal was dismissed by the AAO, agreeing with the decision of the director in finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings. The applicant has filed a motion to reopen/reconsider, currently before the AAO.

A motion to reopen must state the new facts to be proven in the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Service (USCIS) policy. A motion to reconsider a decision must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Although motions to reopen a proceeding or reconsider a decision shall not be considered under Section 245A of the Act, the AAO may *sua sponte* reopen and reconsider any adverse decision.<sup>1</sup> While the AAO may *sua sponte* reopen, on its own motion, a matter previously adjudicated, the record reveals no error in the adjudication of the either the application for temporary residence or the appeal that would warrant reopening.

While the applicant has submitted additional evidence in his motion to reopen/reconsider, the AAO does not find that this evidence warrants reopening the case.

In support of the motion, the applicant has submitted an additional statement from Ruben Ozaeta, whose previous statement was considered by the director in denying the case. The applicant has also submitted a statement from a new witness, [REDACTED]. The statements of these witnesses are offered as evidence in support of the applicant's continuous residence in the United States during the requisite statutory period. However, it is noted that on April 13, 2007, the director issued a Request for Evidence (RFE). The RFE instructed the petitioner to submit evidence of the applicant's continuous residence in the United States throughout the requisite statutory period. In denying the application, the director concluded that the documents submitted in response to the RFE were not sufficient to establish that the applicant's continuous residence in the United States throughout the requisite statutory period. On appeal, the applicant

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<sup>1</sup> The AAO's decision dismissing the appeal specifically advises the applicant on the cover page that "...you are not entitled to file a motion to reopen or reconsider your case."

did not submit any additional evidence previously requested by the director in the RFE. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the application is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). As in the present matter, where an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Ohaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted with the motion.

As additional support for the motion to reopen/reconsider, the applicant alleges that his application was denied because of ineffective assistance of the preparer of his response to the RFE. However, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). Furthermore, United States Citizenship and Immigration Service (USCIS) is not responsible for the action, or inaction, of the applicant's representative.

Pursuant to 8 C.F.R. § 103.5(b), motions to reopen legalization proceedings under sections 245A of the Immigration and Nationality Act shall not be considered. Therefore, the matter will not be reopened. Accordingly, the previous decision of the AAO will not be disturbed and the motion to reopen/reconsider will be rejected.

**ORDER:** The motion to reopen/reconsider is rejected. This decision constitutes a final notice of ineligibility.