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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090

**PUBLIC COPY**



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

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Date: **NOV 08 2011**

Office: NEW YORK

FILE: 

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.

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

The director erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for a scheduled interview on March 8, 2006.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 7, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal to the AAO. On September 13, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.<sup>2</sup>

On September 13, 2011, the AAO issued a notice of intent to deny (NOID) the I-687 application, informing the applicant of the deficiencies in the record and providing him with an opportunity to respond.<sup>3</sup> Specifically, the AAO requested that the applicant provide evidence that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. In addition, since the record contains materially inconsistent testimony regarding the date of the applicant's initial entry into the United States, the applicant was requested to provide a listing of all of his entries and exits from the United States, since the date of his initial entry and through the end of the requisite statutory period. The applicant has not submitted any additional evidence in response to the AAO's request.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility.

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<sup>1</sup> On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff*, Case [REDACTED]

<sup>2</sup> The AAO notes that attorney [REDACTED] has provided a completed Form G-28, Notice of Entry of Appearance as Attorney or Representative. Since [REDACTED] has been suspended from practicing before the Department of Homeland Security effective May 7, 2008, he has not been provided a copy of this decision.

<sup>3</sup> The NOID noted that at the time of completing the I-687 application the applicant did not list any residences in the United States during the requisite period. The applicant listed one absence from the United States during the requisite period, from December 1987 to January 1988. In addition to the I-687 application, the record contains a Form I-485, application to adjust to permanent resident status under the Diversity Visa program, and a Form G-325A, biographic information sheet, signed by the applicant on March 23, 2001. The Form G-325A requests applicants to list their last address outside the United States of more than one year. On the Form G-325A, the applicant stated that he resided in [REDACTED] from August 1981 to April 1999. The NOID noted that this contradiction is material to the applicant's claim in that it has a direct bearing on his residence in the United States for the duration of the requisite period.

8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period.

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. Given the paucity of credible evidence contained in the record and the applicant's failure to respond to the NOID, the appeal will be summarily dismissed.

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