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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



U.S. Citizenship  
and Immigration  
Services

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Date: NOV 18 2011 Office: SAN FRANCISCO

FILE: [Redacted]

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 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 San Francisco 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 October 3, 2006.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 5, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal to the AAO. On September 26, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On September 26, 2011, the AAO issued a notice of intent to deny (NOID) the I-687 application, informing the applicant of deficiencies in the record and providing him with an opportunity to respond.<sup>2</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 applicant was born on June 6, 1968, and was, therefore, very young during the requisite statutory period, the NOID requested that the applicant provide evidence of school attendance and vaccinations in the United States, as well as evidence of being cared for by an adult during this period. Further, the NOID requested that the applicant provide a full criminal disposition for his conviction for a violation of section 487(a) of the California Penal Code (PC), *grand theft: property over \$400*.<sup>3</sup> In response to the AAO's request, the applicant submitted his own statement that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has not submitted any additional evidence in response to the AAO's request.

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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 NOID noted that at the time of completing the I-687 application, the applicant listed a residence in [REDACTED] from October 1981 through the end of the requisite period. He listed one absence from the United States during the requisite statutory period, in September 1987. The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED]. The NOID noted that the witness statements lack sufficient detail, because they fail to provide concrete information specific to the applicant which would demonstrate that the witnesses have a sufficient basis for reliable knowledge about his residence in the United States during the requisite period.

<sup>3</sup>The NOID noted that the applicant failed to establish that he is not ineligible for temporary resident status on the basis of his criminal conviction, because he failed to submit evidence to establish the full criminal disposition of his theft arrest. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

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. 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.<sup>4</sup>

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.

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<sup>4</sup> The record reveals that on February 1, 2001, removal proceedings were initiated against the applicant as a nonimmigrant overstay, pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act, as amended. On August 16, 2001, the Immigration Judge ordered him deported in absentia. Subsequently, a Form I-205, warrant of removal was issued, which remains outstanding. The applicant apparently used the alias of [REDACTED]. The record of those removal proceedings is contained in the Administrative file, or A-file, [REDACTED].