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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

L1

[redacted]

Date: NOV 21 2011 Office: SAN DIEGO 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:

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 San Diego 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 February 2, 2007.[1] Because the director erred in denying the application based on abandonment, on October 6, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal to the AAO. On October 12, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On October 12, 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.[2] Specifically, the AAO requested that the applicant provide evidence that he entered the United States before January 1, 1982, and 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 reflects that the applicant was born on [redacted] and was, therefore, very young during the requisite statutory period, the applicant was asked to produce evidence of school attendance and vaccinations in the United States, as well as evidence of being cared for by an adult during this period. In response to the AAO's request, the applicant submitted a statement that he does not possess any school records. The applicant has not submitted any further evidence in response to the AAO's request.[3]

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[1]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 2:86-cv-01343-LKK-JFM.

[2]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. He listed five absences from the United States during the requisite period, one absence per year from 1983 through 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. In addition, [redacted] were living in Mexico during the requisite period and, therefore, did not have first-hand knowledge of the applicant's continuous residence in the United States during the requisite period.

[3]In response to the NOID, the applicant submitted copies of witness statements which have previously been submitted into the record. The applicant also submitted documents pertaining to his father's continuous residence in the United States during the requisite period. However, since these documents do not mention the applicant, they are not relevant to the instant claim. Although spouses and children may file an I-687 application for temporary resident status as derivative class members if they have a principal applicant (spouse or parent) who qualifies as a

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.

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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class member, the derivative spouse or child must be able to meet the temporary resident eligibility criteria set forth in 8 CFR § 245a.1 and 245a.2 independently of the principal applicant. Therefore, each applicant for temporary residence status must submit evidence of his or her own residency and physical presence in the United States since January 1, 1982.