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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 30 2011 Office: NATIONAL BENEFITS CENTER

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:



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 National Benefits Center. 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 respond to a notice of intent to deny (NOID) the application.¹ Because the director erred in denying the application based on abandonment, on October 12, 2010, the director issued a notice advising the applicant of the right to appeal to the AAO. On October 13, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On October 13, 2011, the AAO issued a NOID regarding 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 that he continuously resided in the United States in an unlawful

¹On 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.

²The NOID noted that at the time of completing the I-687 application the applicant listed residences in New York from April 1980 through the end of the requisite period. He listed two absences from the United States during the requisite period, in 1985 and 1987, respectively. The applicant submitted, as proof of his entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED] and [REDACTED]. However, 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] and [REDACTED] state that the applicant first came to the United States in 1981. The testimony of the witnesses is inconsistent with the applicant's testimony in the I-687 application that he began residing in the United States in April 1980. Also, [REDACTED] states that the applicant resided with him at two different addresses on [REDACTED] from 1981 through the end of the requisite period, and [REDACTED] states that he has been the applicant's next-door neighbor on [REDACTED] for the same period. However, the testimony of the witnesses is inconsistent with the applicant's testimony in the I-687 application, in which he does not list a residence on [REDACTED] during the requisite period. Further, the NOID noted that the record contains a passport number 438475, issued to the applicant in Trinidad and Tobago on May 11, 1983. The passport reveals, at page 7, that the applicant was issued a B-2 nonimmigrant visitor's visa in Port of Spain on August 19, 1983. The passport further reveals that the applicant entered Trinidad and Tobago on March 11, 1984 and left the country on April 18, 1985. However, at the time of completing the I-687 application, the applicant failed to list any absences from the United States in 1983 and 1984. The NOID noted that the inconsistencies in the record regarding the date of the applicant's first entry into the United States, the specific locations where the applicant resided during the requisite period, and the dates of his absences from the United States during that period, are material to his claim, in that they have a direct bearing on his residence in the United States for the duration of the requisite period.

status since such date for the duration of the requisite period. In addition, since there are material inconsistencies in the record regarding the dates of the applicant's absences from 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. 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.