U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

DATE: OCT 07 2011 Office: NEW YORK 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, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on May 9, 2005. On February 1, 2007, the director denied the application noting that the applicant failed to appear for a rescheduled interview on January 25, 2007 and stated that the applicant did not provide an explanation for not appearing. Thus, the director indicated that the application was abandoned.

On October 5, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. The applicant was informed that he was entitled to file an appeal with the AAO which must be adjudicated on the merits.

On appeal, counsel states that the applicant submitted a letter stating that he could not attend the interview.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of the Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of his application.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided a written statement from [redacted] The statement is not probative of either the applicant's entrance to the United States or the applicant's continuous residence throughout the relevant period. Further, the statement does not indicate how the affiant dates her initial meeting with the applicant, how frequently she had contact with the applicant, or how she has personal knowledge of the applicant's presence in the United States.

The affidavit contains statements that the affiant has known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The witness's statement does not provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge

about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, the witness's statement does not indicate that its assertions are probably true. Therefore, it has little probative value.

The AAO notes that there are several inconsistencies in the record of proceeding. The applicant has provided inconsistent information regarding the date of his first entry into the United States and how he entered. In a copy of a Form I-687 signed by the applicant in 1991, in part #25 asking about the applicant's type of visa the applicant stated "none." In a CSS Newman worksheet signed under the penalty of perjury on August 8, 1991, the applicant stated that he first entered without inspection in Miami, Florida on December 20, 1981. The AAO notes that both Forms I-687 in the record of proceeding list addresses and employment beginning in December 1981. In a statement signed on September 9, 2009, the applicant stated that he first entered the United States on July 21, 1981 with a B1/B2 visa at John F. Kennedy Airport in New York. The applicant also stated that he violated his nonimmigrant status by overstaying.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

In the instant Form I-687, and in the Forms I-687 and the CCS Newman worksheet signed on August 8, 1991, the applicant lists an absence from August 1986 to January 1987 to India to visit family. This absence lasted more than 45 days.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless the return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C,* 19 I&N Dec. 808 (Comm. 1988).

Since there is no evidence in the record of proceeding establishing an "emergent reason" as the cause for the applicant's failure to return to the United States in a timely manner, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-, supra.* The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

On August 23, 2011, the AAO issued a notice of intent to deny (NOID) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. No response has been received.

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.