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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: **SEP 13 2011**

Office: LOS ANGELES

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 Los Angeles 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 December 15, 2006.¹ 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 the AAO. On July 25, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On July 25, 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. 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 from the applicant, the AAO requested that the applicant 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.² The applicant has not submitted any evidence in response to the AAO's request.³

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 the applicant has provided inconsistent information regarding his absences from the United States during the requisite statutory period. At the time of completing the I-687 application, the applicant listed one residence address in the United States from November 1980 through the end of the requisite period, and one absence from the United States during the requisite period, in September 1987. However, at number 16 of the application the applicant states that he last came to the United States on February 2, 1981.

³ On appeal, the applicant states that he has relied to his detriment an attorney who assisted him with the I-687 application. It is noted that any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The AAO notes that the record does not contain a Form G-28, notice of entry of appearance, filed by an attorney on the applicant's behalf. The applicant has not submitted any of the required documentation to support an appeal based on ineffective assistance of counsel. Therefore, the applicant is found not to have established a claim of ineffective assistance of counsel.

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).

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.