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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: **FEB 10 2012**

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:

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 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 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 of the National Benefits Center issued a notice advising the applicant of the right to appeal to the AAO. On December 29, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On December 29, 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

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's testimony contains materially inconsistent statements from him regarding the date of his initial entry into the United States, and the dates he resided and worked at particular locations in the United States. At the time of completing the instant I-687 application, the applicant listed a residence [REDACTED] Santa Ana, California from 1981 through the end of the requisite period. He listed employment as a counterperson from 1987 to 1988 at [REDACTED]. He listed one absence from the United States during the requisite period, in 1984. However, at the time of completing the initial I-687 application in 1988, the applicant listed a residence [REDACTED] in Santa Ana from August 1984 through the end of the requisite period. He listed employment as a janitor with [REDACTED] in Anaheim from July 1985 to December 1986, and as a counterperson with [REDACTED] in Anaheim from April 23, 1987 through the end of the requisite period. The applicant did not list any absences from the United States during the requisite period. At the time of his interview on June 7, 1988, he amended the initial I-687 application multiple times to note that his first and only entry into the United States was in August 1984. At the time of completing the I-485 application in 2002, the applicant stated that he last arrived in the United States in August 1980. At the time of his interview on October 18, 2005, the applicant signed a sworn statement that he first entered the United States in July 1982. In a statement on appeal, the applicant stated that he first entered the United States in June 1981, and that he had one absence from the United States during the requisite period, in 1984 for 15 days. The NOID requested a reasonable explanation for these inconsistencies. The NOID also 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. Further, since the applicant was born on [REDACTED] 1971, and was very young during the requisite statutory period, the NOID requested that the applicant provide evidence of vaccinations in the United States, as well as evidence of being cared for by an adult during this period.

status since such date for the duration of the requisite period. The applicant has not submitted any additional evidence in response to the AAO's request.³

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.

³The NOID also noted that the applicant had not met his burden of establishing that he is otherwise admissible to the United States. The record reflects that [REDACTED] the applicant was arrested and charged with a violation of section 25662 of the California Business & Professions Code (BP), *possession of alcohol by a minor*, and a violation of the California vehicle code (VC), section 13202.5, *suspension, delay, or restriction of driving privileges for possession of alcohol by a minor*. The record does not reveal a final court disposition for this arrest. (Superior Court of California, Orange County, case number [REDACTED] 1992, the applicant was arrested and charged with violations of the California Vehicle Code (VC), as follows: section 23152(a), *driving under the influence of alcohol or drugs*; section 23152(b), *driving with blood alcohol content .08 or higher*; section 14601.1(a), *driving when privilege suspended or revoked*; and, 23222(a), *possession of open container while driving*. The record does not reveal a final court disposition for this arrest. (Superior Court of California, Orange County, case number [REDACTED] In addition, the applicant amended the I-485 application at Part 3, number 1, to reflect that he was also arrested in 1991 in Santa Ana for DUI. The NOID noted that the applicant failed to submit a final court disposition for the 1991 and 1992 charges, or evidence that the offenses for which the applicant was arrested did not result in a conviction.