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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**

[REDACTED]

L1

Date: **FEB 27 2012** Office: LOS ANGELES

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 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 April 16, 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 the AAO. On January 17, 2012, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On January 17, 2012, the AAO issued a 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.² In addition, since the record contains materially inconsistent testimony regarding the date of the applicant's initial entry into 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. In addition, since, at the time of completing the I-687 application, the applicant did not list any residences in the United States from July 1987 through the end of the requisite period, the applicant was requested to state where he was residing during this period. Further, since the applicant was born [REDACTED] 1973, and was very young during the requisite statutory period, the applicant was requested to produce evidence of vaccinations in the United States, as well as evidence of being cared for by

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.

²The NOID noted that at the time of completing the I-687 application, the applicant listed a residence in Stanton, California from August 1981 to July 1987. He did not list any residences in the United States from July 1987 through the end of the requisite period. Although he stated that he last entered the United States in August 1988, at the time of completing the I-687 application he did not list any absences from the United States. The applicant did not submit any evidence in support of an entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the end of the requisite period. However, in an unsigned Form EOIR-42B, application for cancellation of removal heard and denied by and Immigration Judge on January 9, 2002, at numbers 19, 20, 21 and 24, the form states that the applicant first entered the United States on foot and without inspection at San Ysidro, California on August 21, 1988. Further, in an unsigned Form G-325A, biographic information sheet, dated March 9, 1999 and filed in support of the Form EOIR-42B, it is stated that the applicant resided in Mexico from January 1973 to July 1988.

an adult during this period.³ The applicant has not submitted any 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.

³The NOID also noted that the record reveals the applicant was twice convicted in 1996 of violations of section 22350(VC), *driving at unsafe speed for prevailing conditions*, infractions pursuant to section 40000.1 (VC) (Court 30440, docket number WGG472). The NOID noted that, for purposes of applying for adjustment to temporary resident status, the applicant's convictions for two infractions do not constitute an additional basis of ineligibility. The NOID further noted that the record reveals that on November 17, 1998, removal proceedings were instituted against the applicant based upon his being inadmissible to the United States as an alien present in the United States without having been admitted, pursuant to Section 212(a)(6)(A)(i) pursuant of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1182(a)(6)(A)(i). On January 9, 2002, an Immigration Judge granted until March 9, 2002 for the applicant to voluntarily depart from the United States, with an alternate order of deportation to Mexico should he fail to depart. On October 8, 2003, the Board of Immigration Appeals (BIA) dismissed the case, and on June 23, 2005, a motion to reopen BIA jurisdiction was denied. On July 12, 2005, the applicant filed a Petition for Review with the U.S. Court of Appeals for the Ninth Circuit, the status of which is not known. Regarding the applicant's inadmissibility under Section 212(a)(6)(A)(i) of the Act, although this ground of inadmissibility is waivable, even if he were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.