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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**



L<sub>1</sub>

Date: **FEB 27 2012** Office: NEW YORK

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.

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 New York office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 5, 2006, the applicant filed an application for status as a temporary resident (Form I-687). 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 May 24, 2006.<sup>1</sup> The applicant was not issued a notice advising him of the right to appeal the decision to the Administrative Appeals Office (AAO). Because the director erred in denying the application based on abandonment, on January 30, 2012, the AAO withdrew the director's decision. The decision is now before the AAO on a late-filed appeal, which the AAO will treat as timely due to the director's error.

On January 30, 2012, the AAO issued a notice of intent to deny (NOID) the I-687 application, informing the applicant of 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, the applicant was asked to explain material inconsistencies between his testimony and that of his witness [REDACTED] regarding the dates of his absences from the United States during the requisite period. In rebuttal to the NOID, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant also asserts that any discrepancies in the evidence are unintentional and due to the passage of time. The applicant has not submitted any additional information in response to the NOID.

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

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<sup>1</sup> 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.

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.