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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U.S. Citizenship and Immigration Services

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[redacted]

Date: JAN 05 2012

Office: CHICAGO

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:

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 Chicago 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 November 30, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On November 30, 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 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]

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[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[redacted]

[2] The NOID noted that, at the time of completing the I-687 application, the applicant listed residences and employment in Illinois from 1981 through the end of the requisite period, and one absence from the United States during the requisite period, from November to December 1987. The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from [redacted] However, the witness statements lack sufficient detail, because they fail to provide concrete information specific to the applciant which would demonstrate that the witnesses have a sufficient basis for reliable knowledge about his residence in the United States during the requisite period. In addition, the NOID noted that in the instant I-687 application, the applicant listed a residence at [redacted] in Chicago from August 1981 to July 1985, while in an I-687 application filed by him in 1990, he listed this address as a residence from 1981 to 1984. Further, the NOID noted that in a sworn statement given by him on June 15, 2008 at Chicago-O'Hare International Airport, the applicant confirmed that he entered into the United States on March 4, 1990 with a B-2 nonimmigrant visitor's visa. However, he failed to list any absence from the United States in 1990 in the instant I-687 application, in the initial I-687 application filed by him in 1990 and in a CSS class member worksheet signed by him on March 20, 1990. While outside of the requisite period, these inconsistencies call into question the veracity of the applicant's testimony concerning his continuous residence in the United States during the requisite period. The NOID requested that the applicant provide a reasonable explanation for the above inconsistencies.

[3] The NOID also noted that on October 22, 2008, removal proceedings were initiated against the applicant. On May 18, 2011, an Immigration Judge found him to be removable from the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1182(a)(7)(A)(i)(I), based upon his being inadmissible to the United States and excludable as an immigrant without an immigrant visa. On that date, the applicant was given until July 18, 2011 to voluntarily depart the United States, or be deported should he not

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.

do so. The AAO notes that this ground of inadmissibility does not apply to legalization applicants, pursuant to section 245A(d)(2)(A) of the Act. On May 31, 2011, the applicant appealed the decision to the Board of Immigration Appeals (BIA), which appeal is currently pending.