

Administrative Appeals Office
U.S. Department of Homeland Security
Washington, DC 20529-2090

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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: **JUN 05 2012** Office: KANSAS CITY, MO

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, Kansas City, Missouri. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of [REDACTED] who claims to have lived in the United States since 1981, submitted a Form I-687, Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet on July 11, 2005. 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 Request for Evidence (RFE) dated July 19, 2006.¹ Because the director erred in denying the application based on abandonment, on July 12, 2011, the director issued an amended decision notifying the applicant of the right to appeal to the AAO. On April 2, 2012, the AAO withdrew the director's decision.

On April 2, 2012, the AAO issued a Notice of Intent to Deny (NOID) informing the applicant of the deficiencies in the evidence of record and providing him with an opportunity to provide rebuttal evidence and to submit additional evidence in support of his application. 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 The applicant has not submitted any response to the NOID and has submitted no evidence in response to the AAO's request.

As previously stated in the NOID, 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.

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 provided contradictory statements and documents in support of his claimed entry in 1981 and his continuous residence through the requisite period. The AAO notified the applicant that the affidavits he submitted in the record to establish his residence and employment in the United States during the requisite period are substantively deficient. The AAO also requested the applicant to submit some primary evidence of his residence in the United States, such as school or medical records, given the fact that he was only ten years old at the time of his claimed entry into the United States in 1981.

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 lack of credible evidence in the record to establish the applicant's claim that he has continuously resided in the United States for the requisite period for legalization under the Act, 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.