

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



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and Immigration
Services

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DATE: **JUN 05 2012**

OFFICE: NEW YORK, NY



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

The applicant is a native of Bangladesh who claims to have resided in the United States since June 1981. He 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 October 25, 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 appear for a scheduled interview on September 7, 2006.¹ Because the director erred in denying the application based on abandonment, on September 29, 2010, the director, National Benefits Center, issued a notice advising the applicant of the right to appeal to the AAO. On July 8, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On July 8, 2011, the AAO issued a NOID informing the applicant of the deficiencies in the record and providing him with an opportunity to respond and provide additional evidence. 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 evidence in response to the AAO's request.

It is noted that counsel for the applicant stated on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-694, that a brief and or supplementary documentation will be submitted after receipt of a copy of the record of proceedings (ROP). The applicant stated in a July 23, 2011 letter that he would submit additional evidence within 30 days. The applicant's FOIA request was processed on March 27, 2012, however, the record does not reflect receipt of a brief or additional evidence. Therefore, the record must be considered complete.

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 AAO noted in the NOID that the witness statements the applicant submitted in support of his application lacked detail and were of minimal evidentiary value. The AAO also noted that the record indicates that the applicant had a prolonged absence from December 1987 to October 1988 that exceeded 45 days for a single absence, and exceeded the aggregate of 180 days for all absences between January 1, 1982, through the date the application is filed, that disrupted any continuous residence the applicant could establish, and that the record lacked evidence that the prolonged absence was due to an emergent reason.

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.

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 sufficient 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.