

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

PUBLIC COPY



L1

Date: **MAR 07 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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, New York, based on abandonment. The director subsequently reopened the proceeding.¹ The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on November 29, 2005. The director incorrectly denied the application based on abandonment pursuant to 8 C.F.R. § 103.2(b)(13). The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).² Following *de novo* review, the AAO found that the director's basis for denial of the applicant's Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient credible evidence to support his application.

On January 4, 2012, the AAO sent the applicant a Notice of Intent to Deny (NOID) informing the applicant of the deficiencies in his application and providing him with an opportunity to submit additional evidence to establish 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 responded to the AAO's notice of deficiencies in the record on January 25, 2012 by requesting an extension of time so he could submit additional evidence.³ The AAO responded in writing giving the applicant until February 24, 2012 to submit additional evidence. To date, no additional evidence has been submitted.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.

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 Notice, the appeal will be summarily dismissed.

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 conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ An attorney wrote the AAO in the applicant's behalf. In the absence of a signed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, counsel will not receive a copy of this decision.



ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.