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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090

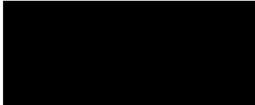


**U.S. Citizenship  
and Immigration  
Services**

L1



DATE: **MAR 29 2012** Office: NATIONAL BENEFITS CENTER

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 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, National Benefits Center. The matter 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 September 30, 2005. On November 22, 2006, the director denied the application noting that the applicant failed to respond to the director's notice of intent to deny (NOID). Thus, the director indicated that the application was abandoned.

On October 12, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment.<sup>1</sup> The applicant was informed that he was entitled to file an appeal with the AAO which must be adjudicated on the merits.

On appeal, counsel states that the applicant previously submitted the criminal conviction documents requested in the director's NOID. Counsel also asserts that the convictions do not render the applicant ineligible for the benefit sought.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On February 7, 2012, the AAO issued a NOID informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. No response has been received.

In the NOID, the AAO noted that the applicant did not provide any witness evidence outside of his own testimony on the Form I-687. Also, the applicant was four years old in 1981 and there is no evidence in the record of proceeding of his care and financial support as a minor during the requisite period.

Beyond the decision of the director, the applicant has not established that he is admissible. Section 245A(a)(4)(A) of the Act requires that the applicant establish that he is admissible to the United States as an immigrant in order to be eligible for temporary resident status. On December 17, 1998 the Immigration Court ordered the applicant's removal. On July 28, 2004, the applicant was arrested and charged with illegal entry after removal in violation of 8 U.S.C. § 1326(a). The applicant filed

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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.

the Form I-687 on September 30, 2005. The applicant sought admission to the United States on September 30, 2005, a period within 10 years of the date of the applicant's removal as ordered by the immigration judge. Accordingly, the applicant is inadmissible as an immigrant under section 212(a)(9)(A)(ii)(I) of the Act and ineligible for temporary resident status under section 245A(a)(4)(A) of the Act. Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act, the record indicates that the applicant requested such a waiver and it has not been adjudicated at this time.

Further, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). In adjudicating the applicant's appeal, the AAO finds that the record of proceeding contains evidence that the applicant has the following criminal history:

- On March 8, 1997 the applicant was arrested by the Norwalk Sheriff's Office in California and charged with – *Inflicting Corporal Injury on* [REDACTED]. The record contains no disposition for this arrest.
- On September 29, 1997 the applicant was arrested by the Santa Ana Sheriff's Office in California and charged with – (1) *Selling False Birth Document*, (2) *False Documents*, and (3) *Forging Official Seal* [REDACTED]. The record contains no disposition for this arrest, but records indicate that the applicant was convicted for making a false claim to U.S. citizenship.
- On May 18, 1998, the applicant was convicted of violating section 245(A)(1) PC Felony - *Assault with a Deadly Weapon/Instr.*, in the Superior Court of California, Los Angeles [REDACTED]. The record contains a disposition for this conviction. The disposition states that the applicant was sentenced for 365 days and given credit for serving ninety days in custody.
- On July 23, 2004 the applicant was convicted of violating section 20 VC – *False Statement to DMV/CHP*, in the Superior Court of California, Los Angeles [REDACTED]. The record contains a disposition for this conviction. The disposition states that the applicant was sentenced to 120 days in the Los Angeles County Jail and given credit for thirty-three days in custody.
- A conviction for a violation of 8 U.S.C. § 1325 on November 5, 2004, as stated on the applicant's Form I-694, Notice of Appeal of Decision Under Section 210 or 245A.

The applicant's felony conviction is another basis for denying the applicant's application for temporary resident status.

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

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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.