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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: **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:

SELF-REPRESENTED

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.

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, 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 December 8, 2005. On April 1, 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 the applicant was subsequently informed by U.S Citizenship and Immigration Services (USCIS) that pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment.¹ The applicant was informed that she was entitled to file an appeal with the AAO which must be adjudicated on the merits. On December 17, 2010, the applicant filed a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer requesting that the Board of Immigration Appeals (BIA) reconsider the director's decision. The BIA is not authorized by statute or regulation to decide an appeal on an adverse decision of a Form I-687 and it administratively closed the appeal on January 7, 2011. On January 7, 2011, the director issued a notice of decision on a motion to reopen and reconsider. As the applicant filed the incorrect appeal form, the director allowed the applicant another opportunity to file an appeal. That appeal is now before the AAO.

On appeal, the applicant states that the director's denial was mailed to the wrong address.

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

On February 1, 2012, the AAO issued a NOID informing the applicant of the deficiencies in the record and providing her with an opportunity to respond. No response has been received. The NOID was returned to the AAO, marked as "return to sender," even though it was sent to the applicant at the address she provided on appeal.

In the NOID, the AAO noted that the applicant did not provide any witness evidence outside of her own testimony on the Form I-687. Also, the applicant did not list any address or employment in the Form I-687. Further, the applicant was twelve years old in 1981 and there is no evidence in the record of proceeding of her care and financial support as a minor during 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.

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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.