



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-R-

DATE: AUG. 26, 2016

APPEAL OF CHARLOTTE, NORTH CAROLINA DECISION

APPLICATION: FORM I-687, APPLICATION FOR STATUS AS A TEMPORARY RESIDENT
UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY
ACT

The Applicant, a native and citizen of Mexico, seeks status as a temporary resident. *See* Immigration and Nationality Act (the Act) section 245A, 8 U.S.C. § 1255a and the settlement agreements 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). The Immigration Reform and Control Act of 1986 created a legalization program under section 245A of the Act, which allows eligible foreign nationals who entered the United States before January 1, 1982, and who continuously resided and were physically present in the United States during specified time periods, to adjust status to temporary residence, if they are admissible to the United States and have not been convicted of a felony or three or more misdemeanors in the United States. The application period for temporary resident status ended on May 4, 1988. However, under the terms of the CSS/Newman Settlement Agreements, eligible individuals who did not apply for legalization during the initial application period for certain specific reasons may also adjust status to temporary residence.

The Field Office Director, Charlotte, North Carolina, denied the application. The Director concluded that because the Applicant did not appear for his interview, the application was considered to be abandoned pursuant to 8 C.F.R. § 103.2(b)(13).¹

The matter is now before us on appeal. In the appeal, the Applicant claims that he submitted the requisite temporary residence eligibility documentation. We will remand the matter to the Charlotte, North Carolina Field Office, for further proceedings consistent with the following opinion and for the entry of a new decision.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day

¹ 8 C.F.R. § 103.2(b)(13)(ii) provides that "if USCIS requires an individual to appear for . . . an interview . . . but the person does not appear, the benefit request shall be considered abandoned and denied unless by the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear."

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period for submitting an appeal begins three days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. See 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the Director sent the decision on February 9, 2006, to the Applicant at the Applicant's address of record. On September 29, 2010, the National Benefits Center (NBC) Director sent the Applicant and his attorney an appeal notice stating that pursuant to a court order² issued with respect to the CSS/Newman Settlement Agreements, the Applicant should have been informed of his right to appeal the denial of his application. The NBC Director further stated that the Applicant could appeal the 2006 decision. The Applicant was afforded 90 days to file an appeal. The appeal was not received until February 17, 2016, more than 10 years after the decision was issued. Therefore, the appeal was untimely filed.

Although the appeal is untimely, here, the Director erroneously denied the Form I-687 application as abandoned. While U.S. Citizenship and Immigration Services (USCIS) complied with the court order by informing the Applicant of her appeal rights, the appeal notice sent to the Applicant was returned as undeliverable. In addition, the appeal notice sent to the Applicant's attorney was incorrectly addressed to the Applicant's post office box and also returned as undeliverable.

As the decision to deny the Form I-687 application as abandoned is in error, and as the Applicant did not receive proper notice of his appeal rights, the decision will be withdrawn. The matter shall be remanded to the Charlotte, North Carolina Field Office, and the Applicant shall be afforded an interview at that office.

ORDER: The decision of the Field Office Director, Charlotte, North Carolina, is withdrawn. The matter is remanded to the Field Office Director, Charlotte, North Carolina, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of A-R-*, ID# 18173 (AAO Aug. 26, 2016)

² The court order stipulated that USCIS could not apply the abandonment regulations at 8 C.F.R. § 103.2(b)(13) to legalization applications filed by CSS class members. See *CSS v. Michael Chertoff*, No. CIV. S-86-1343-LKK/JFM (E.D. Cal) Dec. 11, 2009.