

identifying data deleted to  
prevent clearing 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

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services



L1

Date: NOV 08 2011

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 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 director of the National Benefits Center office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 respond to a notice of intent to deny (NOID) the application.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 12, 2010, the director issued a notice advising the applicant of the right to appeal to the AAO. On October 13, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On October 13, 2011, the AAO issued a notice of intent to deny (NOID) the I-687 application, informing the applicant of deficiencies in the record and providing him with an opportunity to respond. 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.<sup>2</sup> In response to the AAO's NOID, the applicant has submitted documents which pertain to the applicant's residence in the United States outside of the requisite statutory period. However, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, these documents are not relevant to the grounds for denial of the application. In addition, in response to the AAO's NOID, the applicant stated, "we have diligently been trying to reopen and petition for our E2 Visas to be current and reinstated." The AAO finds that the applicant's rebuttal to the NOID is not relevant to the stated basis for denial of the I-687 application.

As stated previously, 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.

---

<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.

<sup>2</sup> The NOID noted that at the time of completing the I-687 application, the applicant listed residences and employment in Temecula, California from 1985 through the end of the requisite statutory period. The applicant did not list any absences from the United States during the requisite period. The applicant has not submitted any evidence in support of an entry into the United States before January 1, 1982, and continuous residence in the United States since such date through the end of the requisite period. In fact, at the time of completing the class member worksheet filed contemporaneously with the I-687 application, at number two of the worksheet the applicant denied having entered the United States before January 1, 1982.

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 submit relevant evidence in response to the NOID, the appeal will be summarily dismissed.

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