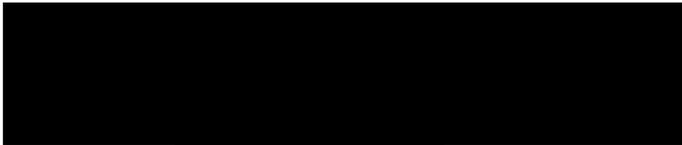


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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [Redacted] Office: LOS ANGELES
MSC-05-092-10045

AUG 01 2007
Date:

IN RE: Applicant: [Redacted]

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. All documents have been returned to the office that decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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, or *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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the District Director for further action and consideration.

The director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director noted in the decision that based on the applicant's previously filed applications he could not have been "front desked" during the settlement time period. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, the applicant asserts that he has provided declarations as evidence of his residence in the United States. The applicant maintains that these declarations are valid documentation of his residence in the United States.

The CSS/Newman Settlement Agreements both state in pertinent part:

Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency. CSS Settlement Agreement paragraph 7 at page 4; Newman Settlement Agreement, paragraph 7 at page 7. The Defendants shall send a written notice of the decision to deny an application for class membership to the applicant and his or her attorney of record, with a copy to Class Counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

On February 21, 2006, the director issued a "Notice of Intended Denial of Class Membership." This notice provides, "[t]he purpose of this letter is to notify you of the intent to deny your application for class membership. . . . You could not have been 'front desked' during the settlement time period according to the record. Thus, it appears you are not eligible to be a class member of these settlements." The applicant was afforded thirty (30) days to submit additional evidence or other information to remedy the perceived deficiency. The applicant failed to provide any additional evidence in response to the notice of intended denial of class membership.

On June 4, 2006, the director issued a Notice of Decision, which provides, "you have not overcome the grounds for denial set forth in the Notice of Intent to Deny. You have failed to meet your burden of proof by a preponderance of the evidence that you resided in the United

States for the requisite periods. From the previously filed applications it has been discovered that you couldn't have been 'front desked' during the settlement time period according to the record." It should be noted that the director's NOID focused solely on deficiencies in the applicant's class membership application; the director neglected to elaborate on or provide any examples of the applicant's failure to submit evidence of his residence in the United States. The applicant was instructed that he could appeal the decision to the AAO by filing a Form I-694, Notice of Appeal.

The director's instruction for the applicant to file a Form I-694, Notice of Appeal, with the AAO is in error and is withdrawn. Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over the denial of an Application for Temporary Resident Status under section 245A of the Act. Here, the application was denied based on the applicant's failure to establish Class Membership under the CSS/Newman Settlement Agreements. Therefore, the AAO is without authority to review the denial of the application. The CSS/Newman Settlement Agreements stipulate that an applicant should be notified of his right to seek review of the denial of his Class Membership Application by a Special Master.

Since the AAO is without authority to review the denial of the application, the appeal must be rejected, despite the fact that the director stated an appeal could be filed with the AAO. However, the director is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q).

ORDER: The appeal is rejected and the file is returned to the director for further action and consideration pursuant to the above.