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U.S. Citizenship
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FILE: [REDACTED] Office: CHICAGO
MSC-05-236-36390

Date: **AUG 08 2007**

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, Chicago, 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 she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director determined that the applicant failed to establish that she filed a timely written claim for class membership in either the Catholic Social Services, League of United Latin American Citizens or Zambrano legalization class action lawsuits. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that she remembers submitting an application for class membership pursuant to the CSS Settlement Agreement.

The director based his decision on an improper standard, as the notice of denial provides:

Title 8 Code of Federal Regulations, Section 245a.10 states, in part, that to be eligible to adjust status to Temporary Resident under Legalization, you must establish: 1. that you have filed a written claim with the Attorney General for class membership in the Catholic Social Services, Inc (CSS), Legal of United Latin American Citizens (LULAC), or Zambrano legalization class action lawsuits prior to October 1, 2000, and 2. that you are not inadmissible to the United States for temporary residence under any provisions of Section 212 (a) of the Act, except as provided in Section 245a.18. The Service has determined that your application fails to establish that you filed a timely written claim for class membership in one of the legalization class action lawsuits listed above. You have failed to provide anything issued to you from the Service pursuant to a claim for class membership. Therefore, you have failed to establish that you are a class member of the legalization class action lawsuits.

The applicant has filed a Form I-687, Application for Status as a Temporary Resident, under the Immigration Reform and Control Act of 1986 (IRCA) Legalization Provisions pursuant to 8 CFR § 245a.1. This application was filed pursuant to the applicant's eligibility for class membership under the CSS/Newman Settlement Agreements. The regulations the director cited in the decision, 8 CFR § 245a.10 and 8 CFR § 245a.18, pertain to the Form I-485, Application to Adjust Status, under the Legal Immigration Family Equity (LIFE) Act Legalization Provisions. Since the applicant did not file her application under the LIFE Act Legalization Provisions, the director applied an erroneous standard in his decision to deny the application.

Regardless of this error, the AAO is without the authority to review denials of applications based on failure to establish class membership. Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement 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.

A review of the record reveals that the district director failed to issue a notice of intent to deny to the applicant explaining the perceived deficiency in the applicant's Class Member Application prior to denying the application. If the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provides the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of 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.

The applicant was instructed on the director's denial notice that she may 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 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. 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 her right to seek review of the denial of her 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.