

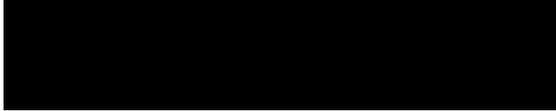
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC-05-146-10995

Office: NEW YORK

Date: DEC 06 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. The file has been returned to the office that originally 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 "R. 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, 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 District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director found that the applicant had failed to submit probative evidence to support his claim of continuous unlawful residence in the United States since prior to January 1, 1982 through May 4, 1988. The director also determined that the applicant had not submitted sufficient evidence to overcome the adverse decision in the Notice of Intent to Deny (NOID) issued on January 27, 2006. In the NOID, the director found that the applicant had not established class membership as required by the CSS/Newman Settlement Agreements. As a result of the applicant's failure to respond to the NOID, the director found the applicant not eligible for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act and denied the application.

On appeal, the applicant attempted to explain his reasons for not responding to the director's NOID. The applicant provided copies of utility bills and a certificate of completion as documentation on appeal.

Paragraph 8, page 5 of the CSS Settlement Agreement and paragraph 8, page 7 of the Newman Settlement Agreement both state in pertinent part:

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, on the document attached as Exhibit 4. On review, neither defendants nor the applicant shall be permitted to submit new evidence to the Special Master.

A review of the record reveals that the district director failed to issue a written notice of the decision to deny the application for class membership to the applicant, with a copy to Class Counsel, explaining the reason for denying the application, notifying the applicant of her right to seek review by a Special Master, and attaching the proper document.

Accordingly, the decision of the district director is withdrawn. The case will be remanded for reconsideration by the director. If the director finds that the applicant has not overcome the director's finding in the NOID that the applicant is ineligible for class membership, then the director must issue a new decision to the applicant regarding the applicant's eligibility for class membership. Any new adverse decision and still pending appeal shall be forwarded to the Special Master as designated in paragraph 9, page 5 of the CSS Settlement Agreement and paragraph 9, pages 7 and 8

of the Newman Settlement Agreement for review and adjudication of the applicant's appeal as it relates to her eligibility for class membership.

If the director determines that the applicant has established class membership or if the applicant's appeal is sustained by the Special Master with respect to the issue of his class membership, the district director shall forward the matter to the AAO for the adjudication of the applicant's appeal as it relates to the issue of his continuous residence in the United States in an unlawful status since before January 1, 1982 through the date she attempted to file Form I-687.

ORDER: This matter is remanded for further action and consideration pursuant to the above.