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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

MSC 05 200 29544

Office: CHERRY HILL

Date:

JUL 13 2007

IN RE:

Applicant:

PETITION: 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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.


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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director concluded that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The district director further determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the 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. The director further determined that the applicant's absence from the United States was not a "casual" absence, as outlined in section 245A(a)(3) of the Immigration and Nationality Act (the Act).

On appeal, the applicant states that his "alleged absence" to Canada was not hidden, that he went to Canada to pursue opportunities, and had no intentions of residing there. The applicant further states that under the terms of the settlement agreements, "corroborating evidence is not important," and that "[c]redible and consistent evidence should suffice."

The CSS/Newman Settlement Agreements provide that if the director finds that the alien is ineligible for class membership, the director must 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 alien 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 new decision regarding the applicant's eligibility for class membership to both counsel and the applicant. 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 his eligibility for class membership.

If the director determines that the alien 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 his 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 May 4, 1988.

The record does not reflect that the director referred his decision or the applicant's appeal to the Special Master as required by the CSS/Newman Settlement Agreements. Accordingly, the decision of the district director is withdrawn. The case will be remanded for reconsideration by the director and referral to the Special Master as required.

If the director determines that the alien 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 his 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 May 4, 1988.

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