



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

LI

FILE: [REDACTED]
MSC-05-138-10043

Office: CINCINNATI

Date:

JUL 17 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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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, Cleveland, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action and consideration.

The director determined that the applicant had not demonstrated that he was continuously or physically present in the United States from January 1, 1981 to May 4, 1988. The director further determined that the applicant had not established that he previously filed for legalization or registered for class membership. 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.

On appeal, the applicant asserts that he entered the United States from Canada in 1981 with his father. The applicant maintains that his last entry into the United States was in 1997.

The AAO notes that the director based his decision, in part, on an improper standard. The director's denial notice provides, "[y]ou testified you did not file for legalization and the I-687 was the first application you filed with Immigration." The CSS/Newman Settlement Agreements, paragraph 1 at page 3, provide the following subclass definition for eligibility under the Settlement Agreements:

All persons who were otherwise prima facie eligible for legalization under section 245A of the INA, and who tendered completed applications for legalization under section 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a QDE, during the period from May 5, 1987 to May 4, 1988, and whose applications were rejected for filing because an INS officer or QDE concluded that they had traveled outside the United States after November 6, 1986 without advance parole.

Therefore, the question is whether the applicant *attempted* to file a legalization application, not whether the applicant actually filed a legalization application. Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, Question #1 provides, "[d]uring the period between May 5, 1987 and May 4, 1988, did you (or a parent or spouse) visit an office of the former Immigration and Naturalization Service (INS) to apply for legalization, but were turned away . . ." The applicant provided an affirmative response to this question on his CSS/Newman Class Membership Worksheet.

The director's denial notice also provides, "[y]ou submitted no evidence you registered for class membership." This is an improper standard pursuant to the CSS/Newman Settlement Agreements. The Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, indicates that applicants may be eligible for legalization under the settlement

agreements if they (or their parent or spouse) either applied or a work permit or otherwise registered for class membership under CSS or Newman/LULAC before October 1, 2000 or if they (or their parent or spouse) visited the Immigration and Naturalization Service (INS) or a Qualified Designated Entity (QDE) during the legalization application period and brought with them a completed legalization application and fee. The applicant affirmatively indicated on his Form I-687 Supplement that he (or his parent or spouse) visited the INS or a QDE during the legalization application period with a completed legalization application and fee.

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 his 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.

Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over this appeal on the issue of the applicant's failure to provide evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at pages 9-10. 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 his appeal as it relates to the issue of his continuous unlawful residence in the United States during the requisite period.

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