

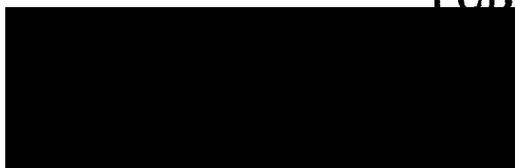
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEWARK Date: JUN 12 2007
MSC-05-312-12937

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. [REDACTED] (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.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5).

The district director determined that the applicant had not established that she was eligible for class membership pursuant to the settlement agreements. The district director found that the applicant failed to establish continuous unlawful residence in the United States since before January 1, 1982 through May 4, 1988. The district director also found that the applicant failed to show credible evidence that she was turned away by the Immigration and Naturalization Service (Service) for traveling outside the United States without advance parole after November 6, 1986. Furthermore, the district director found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien who has been unlawfully present in the United States for one year or more, and who again seeks admission within ten (10) years of the date of such alien's departure or removal from the United States. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status and denied the application.

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.

The district director's notice of denial provides that the applicant failed to show credible proof of class membership. This notice provides, "[y]ou failed to show credible evidence that you were turned away by INS because you traveled outside the United States without advance parole after November 6, 1986 (frontdesked)." 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 her 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.

Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over this appeal on the issues related to the applicant's admissibility to the United States and her residence in the United States from prior to January 1, 1982 through the date she 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. The director's finding that the applicant is applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien who has been unlawfully present in the United States for one year or more, and who again seeks admission within ten (10) years of the date of such alien's departure or removal from the United States, is withdrawn. Under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), time in "unlawful presence" begins to accrue on April 1, 1997. *See Memorandum, Immigration and Naturalization Service, Implementation of section 212(a)(6)(A) and 212(a)(9) grounds of inadmissibility*, March 31, 1997. The applicant's Form I-687 application, dated August 8, 2005, provides that she has been absent from the United States on the following dates: December 1990 until March 1991; June 1987 until August 1987; and September 1983 until December 1983. Therefore, the applicant is not subject to this ground of inadmissibility.

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 her class membership, the district director shall forward the matter to the AAO for the adjudication of her appeal as it relates to the issue of her 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.