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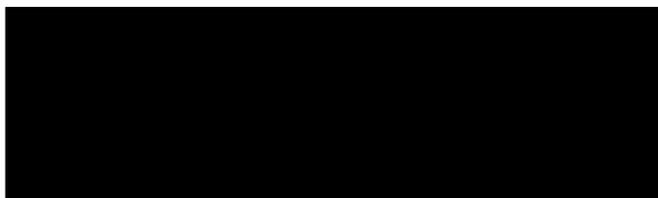
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

[Redacted]  
MSC-05-039-10053

Office: CHICAGO, IL

Date: NOV 14 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:



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 Director of the Chicago, Illinois District Office and that decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application because he determined that the applicant did not establish that he submitted a timely written claim for class membership in either the Catholic Social Services (CSS), League of United Latin American Citizens (LULAC) or Zambrano legalization cases prior to October 1, 2000. In saying this, the director cites 8 C.F.R. § 245a.10, which defines those who were eligible to adjust status to that of a Permanent Resident under the Legal Immigration Family Equity (LIFE) Act legislation of June 1, 2001. It is noted here that this applicant has applied for adjustment to Temporary Resident Status under the terms of the subsequently decided CSS/Newman Settlement Agreements. Therefore, the director found he was ineligible to adjust status to that of a Temporary Resident and denied the application.

An adverse decision regarding Temporary Resident Status may be appealed to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the Service Center within thirty (30) days after service of the notice of denial. An appeal received after the thirty-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.2(p). Pursuant to 8 C.F.R. § 103.5a(b), whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday. 8 C.F.R. § 1.1(h).

The director issued his decision on September 1, 2005 and mailed it to the applicant's address of record. The applicant's appeal was first received September 28, 2005. However, on October 4, 2005 the Service notified the applicant that his application was being returned to him because he did not submit the proper fee with the application. The instructions for filing the Form I-290B clearly indicate that any appeal that is not signed or accompanied by the correct fee will be rejected with a notice that the Form I-290B is deficient. As the applicant submitted his Form I-290B without the correct fee, his first submission of this form was not properly filed. Therefore, the applicant's appeal was rejected for legitimate reasons. The record shows that the application was received again on October 27, 2005 but that the application was again rejected by the Service at that time. The notice sent to the applicant was not clear as to what the deficiency was regarding the application at that time. Therefore, the AAO will consider October 27, 2005 the applicant's date of submittal. However, as October 27, 2005 was fifty-six (56)

days after the director issued the decision, the appeal was untimely filed and must be rejected.

Though the AAO rejects this applicant's appeal, the record indicates the director erred in his decision.

It is noted that pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement, the director shall issue a Notice of Intent to Deny (NOID) prior to denying an application for class membership informing the applicant of Citizenship and Immigration Service's (CIS's) intentions of that denial and providing an applicant an opportunity to submit additional evidence in response to the director's NOID. Here, though the director denied the application based on class membership, the director erred by failing to issue a NOID before doing so.

It is further noted that 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 erred, failing 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 his right to seek review by a Special Master, and attaching the proper document.

It is further noted here that in support of the applicant's application he has submitted two (2) affidavits and one medical receipt that are relevant to the requisite period. The affidavit from [REDACTED] states that [REDACTED] has known the applicant from an unspecified date in 1982. The affidavit from [REDACTED] states that [REDACTED] has known the applicant since 1986. The applicant has also submitted evidence that he had labwork performed by Quest Diagnostics on April 4, 1982.

It is noted here that according to that company's website at [www.questdiagnostics.com/brand/company/b\\_comp/history.html](http://www.questdiagnostics.com/brand/company/b_comp/history.html) Quest Diagnostics was established on December 31, 1996. The name of the company that became Quest Diagnostics was MetPath in 1982. Therefore, it is highly implausible that the applicant could have had lab work performed by a company that would not exist for another fourteen (14) years.

Applicants for adjustment of Status to that of a Temporary Resident bear the burden of establishing that they have resided continuously in the United States for the duration of the requisite period pursuant to 8 C.F.R. § 245a.2(d)(5) which states in pertinent part that applicants for this benefit must prove by a preponderance of the evidence that they are eligible for this benefit. The regulation at 8 C.F.R. § 245a.2(b) specifies that eligible applicants must establish that they entered the United States prior to January 1, 1982. The regulation at 8 C.F.R. § 245a.2(d)(6) goes on to say that applicants must provide evidence of eligibility apart from their own testimony. Here, the applicant has not provided evidence apart from his own testimony that establishes that he entered the United States prior to January 1, 1982 and therefore the AAO finds that he has not met his burden of establishing by a preponderance of the evidence that he is eligible to adjust status to that of a Temporary Resident.

It is noted that, pursuant to 8 C.F.R. § 210.2(g), the director may *sua sponte* reopen any adverse decision. Additionally, the director may certify any such decision to the AAO. *See* 8 C.F.R. § 210.2(h).

**ORDER:** The appeal is rejected.