



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 04 366 10745

Office: New York

Date: **OCT 29 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:

[REDACTED]

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

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

The district director denied the application based upon the conclusion that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements.

On appeal, counsel reiterates the applicant's claim of residence in the United States from prior to January 1, 1982 and asserts that he was absent from this country for less than forty-five days during the requisite period. Counsel includes copies of previously submitted documentation in support of the appeal.

Paragraph 9.B, page 5 of the CSS Settlement Agreement and paragraph 9.B, pages 7 and 8 of the Newman Settlement Agreement both state in pertinent part:

Review of Decisions Involving Determination of Class Membership. Any decisions by defendants denying an application for subclass membership may be appealed to a Special Master. Any such appeal must be post-marked within thirty (30) days of the date of mailing of the notice denying the application for class membership. The Special Master's review shall be based on the documents and other evidence submitted by the applicant, and any documentary evidence relied upon by defendants in reaching the decision to deny the application for class membership.

A review of the record reveals that the district director instructed the applicant to appeal the decision denying his application for class membership to the AAO, rather than the Special Master. Accordingly, the decision of the district director is withdrawn and the case will be remanded for reconsideration by the district director. If the district director finds that the applicant is ineligible for class membership, the director must first issue a new notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provides the applicant thirty days to submit additional written evidence or information to remedy the perceived deficiency. If the applicant has not overcome the district director's finding after having the opportunity to respond to the notice of intent to deny, then the district director must issue a new decision to the applicant regarding his eligibility for class membership. Any new adverse decision and still pending appeal shall be forwarded to the Special Master as designated in paragraph 9.B, page 5 of the CSS Settlement Agreement and paragraph 9.B, 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 continue the adjudication of his application 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.