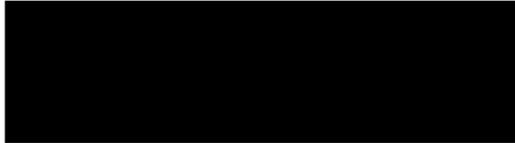


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Services

PUBLIC COPY



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FILE:



Office: NEW YORK

Date:

OCT 31 2007

MSC 04 280 12634

IN RE: Applicant:



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.

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, 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 was ineligible for class membership pursuant to the CSS/Newman Settlement Agreements in light of his timely filed Form I-687, which had been adjudicated and the related appeal dismissed on criminal grounds of ineligibility. Therefore, the district director determined 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 claims that he was unaware of the original denial of his application or the dismissal of the appeal subsequently filed on his behalf. The applicant therefore maintains his claim of eligibility for class membership pursuant to the CSS/Newman Settlement Agreements.

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 while the district director issued a notice of intent to deny, she failed to notify the applicant of his right to seek review by a Special Master and attaching the proper document.

Accordingly, the decision of the district director is withdrawn. The case will be remanded for reconsideration by the director. If the director finds that the applicant has not overcome the director's finding in the NOID that the applicant is ineligible for class membership, then the director must issue a new decision to the applicant regarding the applicant's eligibility for class membership. 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 her eligibility for class membership.

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 the applicant's 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 the date she attempted to file Form I-687.

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