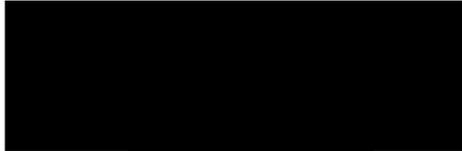


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U.S. Citizenship  
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LI

FILE: [REDACTED]  
MSC-05-188-10071

Office: NEW YORK

Date: **SEP 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: 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.

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 District Director, New York, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The AAO remands the case for further action and consideration.

In her Notice of Decision, the director cited 8 C.F.R. § 245a.2(j), which states that each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. It is noted that this regulation pertains to waiving interviews. Here, the applicant has not requested to waive his interview.

The director went on to cite 8 C.F.R. § 103.2(b)(13) which states, in pertinent part that if an individual is requested to appear for an interview and does not appear and if the Service does not receive a request for rescheduling by the date of the appointment or interview the application shall be considered abandoned and, accordingly, shall be denied. It is noted that here, the applicant submitted a Form G-56 requesting that his October 31, 2005 appointment be rescheduled. This notice was received timely by the Service before the date of that appointment, on October 4, 2005. The record shows that with his Form G-56 requesting that his interview be rescheduled the applicant also submitted evidence in the form of a letter on letterhead from his wife's doctor stating that his wife was in Bangladesh suffering from heart disease and needed extensive treatment. The record also shows that the applicant was granted advance parole on July 1, 2005 under Immigration and Nationality Act § 212(d)(5), which provides advance parole for urgent humanitarian reasons and that his advanced Parole was valid until June 30, 2006.

In denying the applicant's Form I-687, the director notes the two regulations above and states that the applicant did not submit copies of his round trip ticket or a travel agency itinerary showing his departure and arrival dates. She goes on to say that because these items were not submitted with his timely request to reschedule his interview, she considers his application abandoned. Therefore, the director denied the application. The director further states that the applicant may not appeal this decision and that all employment authorization and travel authorization granted to the applicant is revoked as of the date of her denial.

On appeal, the applicant submits copies of his Form I-512 Authorization for Parole of an Alien into the United States, a photocopy of his round trip air ticket, photocopies of pages of his passport, which indicates that the applicant was in Bangladesh on the date of his previously scheduled interview, and his previously submitted timely request to reschedule his interview due to emergent circumstances and supporting documentation. The applicant states that he would like another interview appointment.

As the applicant has not requested that his interview be waived, the AAO finds that the regulation at 8 C.F.R. § 245a.2(j) is not relevant to this proceeding. Further, as the applicant submitted a timely request to the Service to reschedule his interview, the AAO finds that 8 C.F.R. § 103.2(b)(13) does not indicate that this applicant's application has been abandoned. Therefore, the AAO finds that the director erred in denying this applicant's Form I-687 application on the grounds that it had been abandoned. As the applicant has not abandoned his Form I-687 application, he is found by the AAO to continue to have a pending application which requires adjudication.

**ORDER:** The AAO remands the case for further action and consideration.