



U.S. Citizenship
and Immigration
Services

41



FILE:



Office: LOS ANGELES

Date:

AUG 18 2008

MSC 06 027 12180

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of 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. If your appeal was dismissed or rejected, your file has been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the District Director for further action and consideration.

On July 15, 2006, the director determined that the applicant had not established that he is eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director determined that the applicant had applied for temporary residence status in 1988; that the application was accepted and the applicant was afforded an interview; and that the application was denied based on your failure to provide requested required documents. The determined that as the application had been accepted and afforded an interview, the applicant had not been front-desked, discouraged, or rejected from filing an application. Thus, on this basis the director concluded that the applicant is not eligible for class membership and is not eligible to adjust to temporary resident status.

In a late-filed appeal, dated September 6, 2006, submitted to the AAO the applicant asserts that he is eligible for temporary resident status under the terms of the CSS/Newman Settlement Agreements.

Under the CSS/Newman Settlement Agreements, 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 provide 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 both counsel and 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 his or her right to seek review of such denial by a Special Master. See CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

On May 24, 2006, the director issued a notice of intent to deny (NOID) to the applicant. The director found that based on the evidence of record the applicant had not established eligibility for CSS/Newman class membership. The applicant was afforded 30 days to respond to the notice. The applicant responded to the NOID asserting that he had been told that he did not qualify for amnesty because he had left the country. On July 15, 2006, the director issued her decision determining that the applicant had not overcome the basis of the NOID and that the applicant did not qualify for CSS/Newman class membership. The director instructed the applicant to appeal the decision to the Administrative Appeals Office (AAO) by filing a Form I-694, Notice of Appeal.

The director's instruction for the applicant to appeal the decision to the AAO is in error and is withdrawn. Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over the denial of an Application for Temporary Resident Status under section 245A of the Act. Here, the application was denied based on the applicant's failure to establish Class Membership under the CSS/Newman Settlement Agreements. Therefore, the AAO is without authority to review the denial of the application. The CSS/Newman

Settlement Agreements stipulate that an applicant should be notified of his or her right to seek review of the denial of Class Membership Application by a Special Master.

Since the AAO is without authority to review the denial of the application, the appeal must be rejected, despite the fact that the director stated an appeal could be filed. However, the director should reopen the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q) for referral to the Special Master.

ORDER: The appeal is rejected and the file is returned to the director for further action and consideration pursuant to the above.