

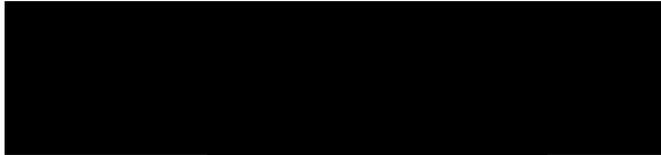
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] MSC-05-234-10310

Office: CHICAGO Date:

FEB 20 2008

IN RE: Applicant: [REDACTED]

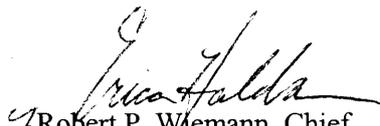
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


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

The director determined the applicant failed to establish that he filed a timely claim for class membership in one of the legalization class action lawsuits. As a result, the director found that the applicant had failed to establish that he is a class member of the legalization class action lawsuits.

On appeal, counsel for the applicant argued that the director's decision was inconsistent with the CSS/Newman Settlement Agreements. Counsel indicated that the applicant has been a class member since February 16, 1990, and has received work authorization from that date through 2004.

Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

A review of the record reveals that the district director failed to issue a notice of intent to deny to the applicant explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency prior to denying the application.

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 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 Membership Application and provides 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 new decision regarding the applicant's eligibility for class membership to the applicant. 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 his eligibility for class membership.

If the director determines that the applicant has established class membership or if the applicant's appeal with respect to the issue of his class membership is sustained by the Special Master, yet the director has identified alternate grounds resulting in the applicant's ineligibility for temporary resident status, the director shall issue a new decision to the applicant explaining the additional grounds of ineligibility. The director shall forward the new decision to the AAO for the adjudication of the applicant's appeal as it relates to any additional grounds of ineligibility raised by the director. For example, should the director determine that the applicant has failed to establish that he resided in the United States continuously in an unlawful status from before January 1, 1982 until the date he attempted to file for temporary resident status, the director shall forward the new decision to the AAO for the adjudication of the applicant's appeal as it relates to the issue of whether the applicant has established that he meets the residency requirements for temporary resident status.

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