



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 263 11483

Office: OKLAHOMA CITY

Date: **FEB 28 2008**

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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. 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, Oklahoma City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act) and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not submitted evidence to overcome the adverse decision in the Notice of Intent to Deny (NOID) issued on December 22, 2005. In the NOID, the director found that the applicant had not established class membership as required by the CSS/Newman Settlement Agreements. As a result of the applicant's failure to adequately respond to the NOID, the director denied class membership and found that the applicant was ineligible to file an application for temporary resident status under Section 245A of the Act pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submits a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A of the INA, signed by [REDACTED], who indicates that she is a notary.

An applicant for temporary resident status may appeal an adverse decision on Form I-694. 8 C.F.R. § 245a.2(o). The applicant may be represented by an attorney or representative in accordance with 8 C.F.R. § 292. 8 C.F.R. § 103.3(a)(1)(iii)(B). The person acting in a representative capacity must be "authorized and qualified to represent," and a notice of appearance must be signed by the applicant to authorize representation in order for the appearance to be recognized by the U.S. Citizenship and Immigration Services (CIS). 8 C.F.R. § 292.4.

The regulations further provide that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by the Department of Homeland Security regulations shall be executed and filed in accordance with the instructions on the form; and the instructions are incorporated into the particular section of the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1). Form I-694 includes the following instruction:

Any Form I-694 that is not signed or accompanied by the correct fee will be rejected with a notice that the Form I-694 is deficient. [An applicant] may correct the deficiency and resubmit the Form I-694.¹

In this case the Form I-694 is not signed by the applicant, but rather by [REDACTED] who identifies herself as a notary. There is no Form G-28, Notice of Entry of Appearance as Attorney or Representative, in the file, however, to indicate that [REDACTED] is an attorney or representative who is authorized to represent the

¹ Note, however, that a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7). As Form I-694 must be filed within 30 days of the notice of decision, it would not be possible to timely resubmit the Form I-694 in this case.

applicant. As the appeal has not been signed and filed by the applicant or by any authorized representative, the appeal is deficient and has not been properly filed. The appeal, therefore, must be rejected.

Although the appeal will be rejected, it is noted that 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.

In this matter, the district director failed to issue a written notice of the decision to deny the application for class membership to the applicant, with a copy to Class Counsel, explaining the reason for denying the application, notifying the applicant of his right to seek review by a Special Master, and attaching the proper document.

Pursuant to 8 C.F.R. § 245a.2(q) the director may *sua sponte* reopen and reconsider any adverse decision. Additionally, the director may certify any such decision to the AAO. *See* 8 C.F.R. § 245a.2(r).

ORDER: The appeal is rejected.