U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: JAN 29 2008
MSC-05-176-10630

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:

[redacted]

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, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The director's decision of January 23, 2006 will be withdrawn, and the matter will be remanded for appropriate action consistent with this decision.

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, on March 25, 2005 (together comprising the I-687 Application). The director concluded that neither the Immigration and Naturalization Service (or Service, now U.S. Citizenship and Immigration Services or CIS) nor a Qualified Designated Entity had rejected the application or discouraged the applicant from filing during the original legalization application period from May 5, 1987 to May 4, 1988, and found that the applicant, therefore, had not established class membership as required by the CSS/Newman Settlement Agreements. The director denied the application for temporary resident status based on the finding that the applicant was not a class member.

On appeal, the applicant states that she left the United States and did not apply for "amnesty" because of a family emergency in Colombia. She added that when she returned, "I went to [the Service] Legalization Center in Smith Street, Paterson New Jersey. It [sic] was denied because I have left the country without an authorization."

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 [U.S. Department of Homeland Security/CIS] 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.

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 case, the director, by basing her decision to deny an application for temporary resident status on a finding that the applicant was not a class member, in effect denied the underlying application for class membership. Contrary to the relevant provisions of the Settlement Agreements, noted above, the director failed, however, to issue a notice of intent to deny to either the applicant or counsel explaining the perceived deficiency in the applicant's Class Member Application; and she failed to issue a written notice of the final decision to deny the Class Member Application to the applicant, with a copy to Class Counsel, explaining the reason for denying the application and notifying the applicant of her right to seek review by a Special Master.

Accordingly, the director's January 23, 2006 decision will be withdrawn. The case will be remanded for reconsideration and appropriate action by the director. If the director finds that the applicant has not overcome the director's finding that the applicant is ineligible for class membership, then the director must issue a notice of intent to deny to the applicant and her counsel 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, as designated in paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. If the director subsequently denies the Application for Class Membership, any new adverse decision and request for review 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 by the Special Master.

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 her class membership, the director shall adjudicate the I-687 Application and issue a new decision. If the decision on the I-687 Application is adverse, the matter shall be certified to the AAO for the adjudication of the applicant's appeal.

ORDER: The director's decision of January 23, 2006 is withdrawn. The matter is remanded for appropriate action consistent with this decision.