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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date: JUL 23 2008

MSC 05 141 11422

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, 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 Acting District Director, Chicago. That decision is now ostensibly before the Administrative Appeals Office on appeal. The appeal will be rejected and the file will be returned to the Acting District Director for further action and consideration.

The acting director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The acting director concluded that on this basis the applicant is ineligible to adjust to temporary resident status and denied the application.

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 (NOID), which explains any perceived deficiency in the applicant's Class Member Application, and must 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 the NOID, if the applicant has not overcome the director's finding, then the director must issue, to both counsel and the applicant, with a copy to class counsel, a written decision denying the application for class membership. 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. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

On February 1, 2006, the acting director issued a NOID to the applicant. The acting director found that the applicant was not eligible for CSS/Newman class membership. The applicant was afforded 30 days to respond to the notice. The applicant does not appear to have responded to the NOID.

On March 14, 2006, the acting director issued a decision finding that the applicant had failed to demonstrate class membership. The acting director gave the applicant the instructions necessary to file an appeal with a Special Master. Notwithstanding those instructions, that appeal is now before the AAO.

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. **The AAO lacks jurisdiction to review the denial of the class membership application.** Since the AAO is without authority to review the denial of the application, the appeal must be rejected.

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