

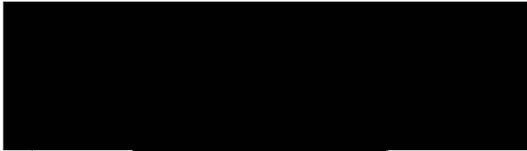
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE:

MSC-06-068-12316

Office: FRESNO

Date:

**JUL 30 2008**

IN RE:

Applicant:



APPLICATION:

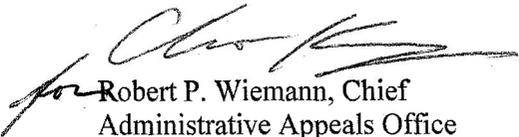
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
for 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, Fresno. 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, on December 7, 2005 (together, the I-687 Application). The district director concluded that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a written statement. On appeal, the applicant stated that she has been residing in the United States since 1981 and tried to file the Form I-687 between May 5, 1987 to May 4, 1988 but "the officer at that time refused to accept [her] application." The applicant states that she left the country in December 1988 assuming that she was "not eligible for life legalization."

On appeal, the applicant also states that she never received the director's October 26, 2006 notice of intent to deny and therefore, "could not respond" to it. There is evidence in the record of proceeding that the NOID was mailed to the applicant's address of record by U.S. Postal Service certified mail with a return receipt requested. The letter was returned to the Citizenship and Immigration Services (CIS) as "unclaimed." However, the director used the same address of record for the applicant when sending his denial letter. The applicant received the director's decision and filed the instant appeal. Furthermore, the address that the applicant included on the Form I-694 is the same as the address of record to which the director sent both the NOID and his December 6, 2006 decision.

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 issued a Notice of Intent to Deny (NOID) 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. The applicant provided a response to the NOID addressing her residency in the United States for the requisite time period. The director denied the application on the ground that the applicant is not a class member. 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 is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q).

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