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



**U.S. Citizenship
and Immigration
Services**

4/1

FILE:

Office: NEW YORK

Date:

JUN 03 2008

MSC 05 350 12304

IN RE:

Applicant: [REDACTED]

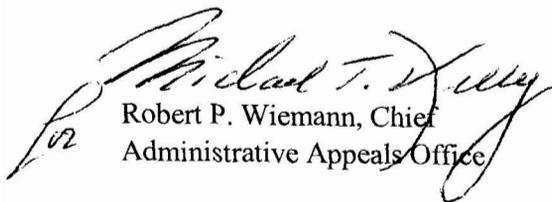
APPLICATION:

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. All documents have been returned to the office that 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, or *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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the District Director for further action and consideration.

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 reiterates her claim of residence in this country for the requisite period and her rejection and discouragement to apply for benefits during the statutory period of May 5, 1987 to May 4, 1988.

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.

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.