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

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FILE: [Redacted]  
MSC-06-089-11571

Office: SAN FRANCISCO

Date: JUN 17 2008

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: 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.

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

On appeal, the applicant asserts that he is eligible for temporary resident status under the terms of the CSS/Newman Settlement Agreements.

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, which explains any perceived deficiency in the applicant's class member application, and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. CSS Settlement Agreement paragraph 7 at page 4; Newman Settlement Agreement paragraph 7 at page 7. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding, then the director must issue a written decision to deny an application for class membership to both counsel and the applicant, with a copy to class counsel. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7. 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. *Id.*

On August 21, 2006, the director issued a notice of intent to deny (NOID) to the applicant. The director found that, based on the applicant's testimony, he is not eligible for CSS/Newman class membership. Here, the director noted that the applicant testified that he attempted to apply for amnesty during the original filing period. He stated that when he did so he was not turned away. Rather, he stated he was told by the immigration officer that he needed more documentation pertaining to the years 1982 through 1984. He went on to testify that he decided not to go back to the office. The applicant was afforded 30 days to respond to the notice. The applicant did not provide a response to the NOID. On October 11, 2006, the applicant received a denial notice stating that he has not overcome the basis for the denial of his application as stated in the director's NOID. The director determined that the applicant does not qualify for CSS/Newman class membership.<sup>1</sup>

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<sup>1</sup> Here, the AAO notes that the director stated that the applicant's testimony proved his application was not rejected by an immigration officer of the Immigration and Naturalization Service (INS) because he was not rejected for having traveled outside of the United States without advance parole or reentering with a visa. Here, the director stated that the applicant was not rejected or "front desked," and this caused the applicant to fail to fulfill the requirements of the Immigration and Nationality Act § 245A. However, it appears that the director was referring to the applicant's failure to meet the Class Member definition in the Settlement Agreements.

The director instructed the applicant to appeal the decision to the 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 Immigration and Nationality Act. Here, the application was denied based on the applicant's failure to establish class membership under the CSS/Newman Settlement Agreements. The CSS/Newman Settlement Agreements stipulate that an applicant should be notified of his or her right to seek review of the denial of his class membership application by a special master. Therefore, the AAO is without authority to review the denial of the application.

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.