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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

JUN 24 2008

MSC 05 197 13478

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 "D. King".

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, Los Angeles, California, 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 issued a Notice of Intent to Deny Class Membership (NOID) on April 3, 2006. On September 27, 2006, upon review of the evidence in the record including the response to the NOID, the director determined that the applicant had failed to overcome the grounds of denial for class membership and thus did not qualify for CSS/Newman class membership. The director concluded that the applicant was not eligible for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act. The director instructed the applicant to appeal the decision to the AAO by filing a Form I-694, Notice of Appeal.

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. 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 for 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. See CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

The director's instruction to 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 his or her class membership 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.