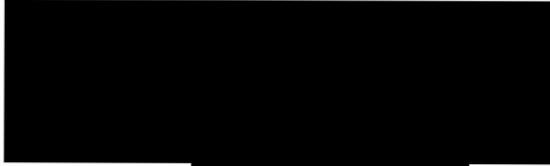


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FILE: [REDACTED]
MSC 06-102-22743

Office: DETRIOT

Date: **SEP 22 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, 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, Detroit. The decision of the director will be withdrawn and the case will be remanded for further action and consideration.

The director denied the application for temporary resident status pursuant to the regulation at 8 C.F.R. § 103.2(b)(13), which states in pertinent part that when an applicant is requested to appear for an interview and does not appear and Citizenship and Immigration Services (CIS) does not receive a request for rescheduling by the date of the interview, the application shall be considered abandoned and, accordingly, shall be denied. In this case, the applicant failed to appear for his scheduled interview on December 7, 2006 and did not request that his interview be rescheduled before that time. Therefore, the director denied the application.

On appeal, the applicant states that although he submitted a change of address form, the director's interview notice was sent to his previous address. He requests another interview.

In these proceedings, the AAO exercises de novo review. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The director's decision in this case must be withdrawn and the case remanded for further action pursuant to the following discussion.

The applicant submitted a letter to the National Benefits Center in which he provided his new address as of July 14, 2006. Service records show that this letter was received July 19, 2006. On August 17, 2006, the director sent the applicant a letter stating that he was to appear for an interview on December 7, 2006. However, the director sent this letter to the applicant at his previous address of residence rather than to his address of record.

Because the director sent the applicant's interview notice to an address that was not his address of record, the AAO finds that a CIS error caused the applicant to fail to appear for his interview. Therefore, the applicant has not yet been afforded the opportunity to appear for an interview. Because he was not afforded this opportunity, the AAO finds that the director's grounds for denying the application pursuant to the regulation at 8 C.F.R. § 103.2(b)(13) are not valid. Therefore, the AAO withdraws the director's finding that the application was abandoned on that basis and remands the application for further action and consideration.

In remanding this case, the AAO notes that the record contains the applicant's criminal record. This record indicates that the applicant has been arrested as follows:

- The applicant was arrested on June 7, 1991 for: 1) a violation of the New York Penal Code § 225.10 *Promoting gambling in the first degree*, a class E Felony; 2) and with a violation of the New York Penal Code § 225.20 *Possession with knowledge of gambling records*, a class E Felony
- The applicant was also arrested on June 9, 1992 for: 1) a violation of the New York Penal Code § 225.10 *Promoting gambling in the first degree*, a class E Felony; 2) and with a violation of the New York Penal Code § 225.20 *Possession with knowledge of gambling records*, a class E Felony; and 3) New York Penal Code § 265 *Criminal possession of a weapon including a firearm or a knife*, which can result in a conviction of either a misdemeanor or a felony offense. At the time of this arrest the applicant used the name [REDACTED]
- The applicant was arrested a third time on January 17, 1995 for a violation of New York Penal Code § 190.25, *Criminal impersonation in the 2nd degree*, a class A misdemeanor; and a violation of New York Penal Code § 165.05, *Unauthorized use of a vehicle in the 3rd degree*, a class A misdemeanor. The applicant used the name [REDACTED] as his own name at the time of this arrest.

Because the record does not contain court dispositions, it is not clear which of these charges, if any, resulted in convictions. Therefore, the AAO cannot determine if the applicant is ineligible to adjust to temporary resident status pursuant to the regulation 8 C.F.R. § 254a.11(d)(1) and 8 C.F.R. § 254a.18(a).

ORDER: The decision of the director is withdrawn. The application is remanded to the director to afford the applicant the opportunity to appear for an interview and then for the adjudication of the application on the merits.