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

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[Redacted]

FILE: [Redacted]
XBT 91-020-3022

Office: BOSTON (PROVIDENCE)

Date:

JAN 16 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

IN BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally 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 under section 245A of the Immigration and Nationality Act (INA or Act), 8 U.S.C. § 1255a, was denied by the District Director, Boston, on June 28, 2006. The decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on October 5, 2007, finding that it had been untimely filed. The applicant, through counsel, has now submitted proof that the appeal had been timely filed with the Providence Field Office of Citizenship and Immigration Services (CIS), and that CIS had inadvertently failed to document the actual date of filing on the applicant's Form I-694, "Notice of Appeal of Decision Under Section 210 or 245A of the INA." In response, the AAO has sua sponte reopened its prior decision.¹ The AAO's decision of October 5, 2007 will be withdrawn. The appeal will be dismissed as moot, as the record indicates that no application for temporary resident status under section 245A of the Act was timely filed.

The record includes evidence establishing that the applicant applied for class membership in a legalization class-action lawsuit by submitting a "Form for Determination of Class Membership in CSS v. Meese [Catholic Social Services or CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated June 5, 1991. On May 13, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). Included with the I-485 Life Legalization Application was the above mentioned Form I-687, which is now the subject of this decision.

The record indicates that both the director and counsel for the applicant, as well as the AAO on appeal, may have erroneously concluded that the applicant had by means of this Form I-687 applied for temporary resident status, either pursuant to the terms of the CSS/Newman Settlement Agreements or otherwise. The AAO notes that no such separate application is contained in the record.

The Form I-687 submitted in support of the applicant's 1991 request for class membership is signed by the applicant and dated June 5, 1991. As such, it is neither a timely filed application under section 245A of the Act, which prescribes a one-year filing period from May 5, 1987 through May 4, 1988 (*see* section 245A(a)(1)(A) of the Act; 8 C.F.R. § 245a.2(a)); nor a timely filed application under the CSS/Newman Settlement Agreements, which permit late submissions under section 245A of the Act from May 24, 2004 through December 31, 2005. The Form I-687, however, is a part of the record and, along with all accompanying documentation, was reviewed and considered by the AAO in deciding the applicant's appeal of the denial of his separate I-485 LIFE Legalization Application.²

¹ Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 245A of the Act are not considered. 8 C.F.R. § 245a.2(q). The AAO may, however, sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

² The AAO notes that, in adjudicating the applicant's I-485 LIFE Legalization Application, the director concluded that the applicant had failed to provide credible and probative documentation to corroborate the applicant's claim of entry into the United States prior to 1982 and continuous residence for the requisite period under section 245A of the Act. On appeal, the AAO has reached the same conclusion. Given the evidence in the record, therefore, even if the applicant had timely filed an application for temporary resident status, he would not have met his burden of proof by a preponderance of the evidence and the director would have correctly denied his application.

The Form I-687 in the record was adjudicated and denied by the director as if it had been a properly filed application for temporary resident status. The AAO rejected the appeal of that decision on October 5, 2007 as untimely filed; upon receiving proof that the appeal had been timely filed, the AAO has reopened that decision. As the record does not contain a properly filed application for temporary resident status, the AAO's decision of October 5, 2007 will be withdrawn. The appeal will be dismissed as moot, as the record indicates that no application for temporary resident status under section 245A of the Act has been filed in this case.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.