



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: ATLANTA Date: MAY 13 2008
MSC-05-176-13088

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, Atlanta, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected, and returned to the director.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on March 25, 2005. The applicant was scheduled to appear for an interview related to this application at the Charlotte District Office on May 4, 2007. On April 30, 2007, the applicant submitted a request to reschedule his interview. The applicant stated in his request to reschedule that he had a doctor's appointment in Durham on May 3, 2007, at 2:30pm and therefore, would need to reschedule the CIS interview. On May 10, 2007, the director determined that the applicant had failed to provide evidence that would constitute "good cause" for a rescheduling of his interview. The director thereafter denied the application due to abandonment.

The regulation at 8 C.F.R. § 103.2(b)(13)(ii) provides if Citizenship and Immigration Services (CIS) requires an individual to appear for an interview, but the person does not appear, the application shall be considered abandoned and denied unless by appointment time CIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear. Pursuant to this regulation, the director concluded that the applicant's request to reschedule did not excuse his failure to appear. The director's denial of this application due to abandonment may not be appealed to the AAO. 8 C.F.R. § 103.2(b)(15).

It is noted that the director informed the applicant that he could file a motion to reopen pursuant to 8 C.F.R. § 103.5. On June 7, 2007, the applicant filed a motion to reopen with the Charlotte District Office. The applicant stated that he was very ill and unable to make the initial interview with CIS and requested a rescheduling of the same. He further states that he will be submitting evidence to support his claim. The director's suggestion that the applicant may file a motion to reopen a proceeding or reconsider a decision shall not be considered for application filed under section 245A of the Act.

Since the AAO is without authority to review the denial of the application, the appeal must be rejected. However, the director is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q). Therefore, the case will be returned.

ORDER: The appeal is rejected.