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

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[REDACTED]

FILE:

MSC-06-029-13484

Office: MIAMI

Date:

MAY 28 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:

[REDACTED]

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, Miami, 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 October 29, 2005. The applicant was sent notice to his last known address to appear for an interview related to this application at the Miami District Office on October 5, 2006. The applicant failed to appear. On October 5, 2006, the director determined that the applicant had failed to appear for his interview without a showing of "good cause" and therefore, his application is to be considered abandoned and denied.

On appeal, the applicant asserts that he never received a notice to appear and requests that the processing of his application continue.

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 had not provided a plausible 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).

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.