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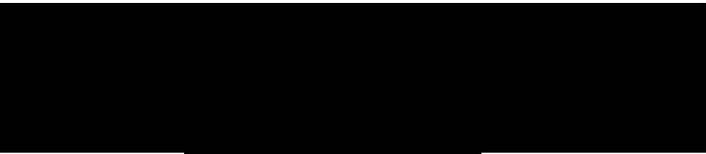
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

NOV 26 2008

IN RE:

Applicant:



APPLICATION:

Application for Class Membership in accordance with 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 which relate to Status as a Temporary Resident Under Section 245A of 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 rejected, your file has been returned to the office that denied your application. If your appeal was dismissed or rejected, 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.

A handwritten signature in black ink, appearing to be "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for class membership filed 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), which relate to the application for temporary resident status, was denied by the District Director (director), Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the director for further action and consideration.

The director determined that the applicant has not established that he is eligible for class membership pursuant to the CSS/Newman Settlement Agreements and denied the class membership application.

On appeal, counsel for the applicant asserts that the applicant is eligible for class membership under the terms of the CSS/Newman Settlement Agreements.

According to the CSS/Newman Settlement Agreements, if the director finds that an applicant is not eligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's application for class membership and provide the applicant 30 days to submit written evidence or other 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 the applicant and a copy to 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.

On November 17, 2006, the director issued a notice of intent to deny (NOID) to the applicant. The director found that the applicant is not eligible for CSS/Newman class membership. The applicant was afforded 30 days to respond to the notice. The applicant responded to the NOID on December 8, 2006. On February 15, 2007, the director issued a denial notice stating that the applicant had not overcome the basis for denial set forth in the notice of intent to deny. The director determined that the applicant does not qualify for CSS/Newman class membership. The director instructed the applicant that if he disagreed with the decision he could appeal the matter to the CSS/Newman Special Master, Center for Human Rights and Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA.

The applicant failed to file the appeal of the denial of his application for class membership with the CSS/Newman Special Master. Instead, the applicant filed the appeal with Citizenship and Immigration Services (CIS), P.O. Box 805876, Chicago, Illinois 60680 and indicated that the appeal related to a denial of an application for temporary residence, rather than to a denial of an application for class membership. The appeal was forwarded to the AAO.

The appeal must be rejected. The CSS/Newman Settlement Agreements stipulate that an applicant may seek review of the denial of the application for class membership by a Special Master. The director notified the applicant of that right, but the applicant appealed the matter to CIS in error. Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over the denial of the Form I-687, Application for Temporary Resident Status under section 245A of the Act. However, the AAO does not have authority to review the denial of the class membership application.

Since the AAO has no authority to review the denial of the application, the appeal must be rejected. However, the director is free to reopen 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.