

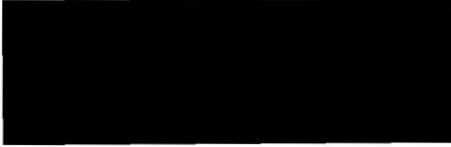
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 05 158 10818

Office: LOS ANGELES

Date:

JAN 30 2009

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.

John F. Grissom, Acting 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, 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) was denied by the Director, Los Angeles. 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. The director concluded that on this basis the applicant is ineligible to adjust to temporary resident status and denied the application.

On appeal, the applicant asserts his eligibility for temporary resident status under the terms of the CSS/Newman Settlement Agreements.

Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provide the applicant 30 days to submit additional written evidence or 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, with 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 April 12, 2006, the director issued a notice of intent to deny (NOID) to the applicant. The director found that based on the applicant's testimony he 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. The director noted in her decision that in response to the NOID, the applicant did not address nor contest his testimony concerning his eligibility for class membership during his legalization interview. On February 13, 2007, the applicant was issued a denial notice stating that he had not overcome the basis for 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 he had a right to file an appeal to a Special Master appointed under the terms of the CSS/Newman settlement. The applicant then incorrectly appealed the matter to the AAO by filing a Form I-694, Notice of Appeal.

Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over the denial of an Application for Temporary Resident Status under section 245A of the Act. Here, the application was denied based on the applicant's failure to establish Class Membership under the CSS/Newman Settlement Agreements. Therefore, the AAO is without authority to review the denial of the application. The

CSS/Newman Settlement Agreements stipulate that an applicant should be notified of his or her right to seek review of the denial of his Class Membership Application by a Special Master.

Since the AAO is without authority to review the denial of the application, the appeal must be rejected, despite the fact that the director stated an appeal could be filed. However, the director is not constrained from reopening 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.