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U.S. Department of Homeland Security
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Washington, DC 20529-2090



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

FILE:

Office: NEWARK

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: [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.


John 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, 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 Director, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file returned to the director for further consideration.

The applicant filed a Form I-687 which was executed by him on April 22, 1988. In his decision denying the applicant's application, the director of the Regional Processing Facility noted that the applicant was scheduled for an interview with regard to the application on November 14, 1988, and January 9, 1989, but that the applicant failed to appear for his interviews. As such, the director denied the application due to the applicant's failure to appear for his scheduled interviews and to present evidence in support of his application. The director informed the applicant of his right to appeal the decision. No appeal was filed, and the decision, therefore, became final.

The applicant subsequently filed a new Form I-687 on October 17, 2005. The director denied that application by decision dated February 26, 2007. In his denial, the director stated that the applicant failed to respond to a Notice Of Intent To Deny (NOID) and denied the application for the reasons set forth in the NOID. The basis of the denial, as articulated in the director's NOID, is that the applicant's Form I-687 was accepted and filed by the Service in 1988. It was adjudicated in 1988 and the applicant's claim was denied. The decision was never appealed and the director notes that it cannot be reopened. The director further notes that the applicant stated that he entered the United States in 1981 and did not thereafter leave the country during the requisite period. The issue, therefore, is whether or not the applicant qualifies as a class member under 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.

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.

ORDER: The appeal is rejected and the file is returned to the director for further action and consideration pursuant to the above.