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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-053-12716

Office: TAMPA

Date: JUN 04 2009

IN RE:

Applicant:

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.

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

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, 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, Tampa. The Administrative Appeals Office (AAO) remanded the case for a new interview and for further action and consideration. The matter is now before the AAO for certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the application will be denied.

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 November 22, 2005 (together, the I-687 Application). The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period, specifically noting inconsistencies in the record of proceeding. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

As the facts and procedural history have been adequately documented in the AAO's previous decision, we will only repeat certain facts as necessary here. On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a brief, a statement from the applicant, and an affidavit. In his appeal brief, counsel argued that the applicant was not permitted the use of an interpreter during his interview and that not having an interpreter present during his interview was unfair and a violation of due process. On March 4, 2009, the AAO remanded the case to the director and the director scheduled a second interview for the applicant for May 1, 2009. Counsel and the applicant were notified about the new interview. The applicant did not appear for his interview on May 1, 2009 and neither counsel nor the applicant provided a reason for not appearing for the interview. On May 7, 2009, the director reaffirmed her decision dated August 14, 2006.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further evidence since the issuance of that decision.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The director's decision of May 7, 2009 is affirmed. The application is denied.