



U.S. Citizenship
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Services

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FILE:

MSC 06 095 18094

Office: NEW YORK, NY

Date: OCT 05 2009

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:



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.

Perry Rhew, 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 Director, New York, New York. 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, the applicant asserts that he is eligible for class membership under the terms of the CSS/Newman Settlement Agreements and that he is otherwise eligible to adjust to temporary resident status.

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 June 22, 2007, the director issued a notice of intent to deny (NOID) to the applicant. The director found that the applicant had not established that he was "front-desked" or turned away when he attempted to file the Form I-687 during the original filing period. As such, the director had determined that the applicant had not established that he is a CSS/Newman class member. On July 11, 2007, the director issued a notice of decision stating that the applicant had not overcome the basis for denial set forth in the notice of intent to deny. Thus, the director determined that the applicant had not demonstrated that he qualified for CSS/Newman class membership. However, the director did not state that she was denying the application for class membership. Instead she indicated, in error, that she was denying the Form I-687, Application for Status as a Temporary Resident Under Section 245A of the INA. Yet, the notice of decision indicates that the director never adjudicated that form on the merits. The director instructed the applicant, also in error, that he could appeal the matter to this office.

The applicant then filed the appeal with U.S. Citizenship and Immigration Services (USCIS), 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 AAO does not have authority to review the denial of the class membership application. Pursuant to 8 C.F.R. § 245a.2(p), the AAO does have jurisdiction over the denial of the Form I-687, Application for Temporary Resident Status under section 245A of the Act. However, that application has not been adjudicated on the merits. The director has only made a determination relating to the applicant's eligibility for class membership.

Since the AAO has no authority to review the denial of an application for class membership, 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) to consider whether all requirements for denials of CSS/Newman class membership applications have been fulfilled in this matter, and if they have not, to re-adjudicate the matter; and if they have, to notify the applicant of his right to appeal the denial of the class membership application to a Special Master.

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