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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

LI

FILE:

MSC 06 101 13073

Office: LOS ANGELES

Date: SEP 03 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:

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, 2007, the director issued a notice of intent to deny (NOID) to the applicant. In the NOID the director stated that the applicant swore under oath, and in writing, that he attempted to apply for amnesty on May 31, 1988, but was not permitted to apply because he had traveled outside the United States without advance parole. An applicant may qualify for class membership if he or she attempted to apply for legalization between May 5, 1987 and May 4, 1988, but was turned away because the applicant had traveled outside the United States after November 6, 1986 without advance parole. 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 stating, in part, that it was his intent to apply for legalization but that he was turned away. He did not specifically address the issue raised by the director in the NOID, that he attempted to apply for legalization after May 4, 1988. The director then denied the application by decision dated May 31, 2007 on the ground that the applicant did not qualify for 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.