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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

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

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FILE:

MSC 05 230 12248

Office: OKLAHOMA CITY

Date:

**SEP 10 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, 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, Oklahoma City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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. The director determined that the applicant has not established that she applied for class membership pursuant to the CSS/Newman Settlement Agreements during the allotted time period according to her sworn testimony and denied the application.

On appeal, the applicant claims that the director violated her rights under the CSS/Newman settlement agreement by denying her Form I-687 application because of a statement she made that was misunderstood during her interview. The applicant states that if during the application period you had been informed by an INS officer or QDE employee that you were ineligible for legalization because you had traveled outside of the United States after November 6, 1986, and returned without permission, or were refused by the INS or its QDEs legalization forms on account of that travel, and that information, or inability to obtain the application forms, was a substantial cause of your failure to timely file or complete a written application, you were otherwise eligible for legalization.

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 both counsel and 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 December 15, 2006, the director issued a notice of intent to deny (NOID) to the applicant. The director found that upon review of the applicant's file and the documents contained therein, she is not eligible for CSS/Newman class membership because the evidence of record does not establish that she or her parents completed an application with the appropriate fee to an INS or QDE office by the specified date (prior to October 1, 2000).<sup>1</sup> The applicant was afforded 30 days to respond to the NOID. In response to the NOID, the applicant claimed that the officer turned her away because she

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<sup>1</sup> The applicant's Form I-687 application was filed on May 18, 2005.

traveled to Mexico in December 1987 and came back in January 1988.<sup>2</sup> On August 31, 2007, the director issued a notice of decision (NOD) stating that the applicant has not overcome the basis for the NOID. Upon review, the AAO found that during the applicant's Form I-687 application interview, the applicant stated that she had no application and that she just wanted to ask questions about the possibility of filing. In the NOD, the director determined that the applicant did not apply for CSS/Newman class membership during the allotted time period and that the additional evidence submitted did not substantiate her claim and denied her application. The director instructed the applicant to file an appeal with the Administrative Appeals Office (AAO) instead of with the Special Master appointed under the terms of the CSS/Newman settlement agreement. The applicant subsequently filed an appeal with the AAO.

The director's instruction for the applicant to appeal the decision to the AAO is in error and is withdrawn. 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.

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<sup>2</sup> The departure and return dates stated on the applicant's response to the NOID must be a typographical error as the director's NOD is dated August 31, 2007.