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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

4

[REDACTED]

FILE:

[REDACTED]

Office: OKLAHOMA CITY

Date:

SEP 16 2009

MSC-06-097-14766

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of
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, your file has been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. 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.

Robert P. Wiemann, 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 of the Oklahoma City office. 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 denied the application because the applicant was found to have abandoned the application. Specifically, the director found that the applicant failed to respond to a Notice of Intent to Deny (NOID) the application on the basis that the applicant has not established that he is eligible for class membership pursuant to the CSS/Newman Settlement Agreements. On appeal, counsel for the applicant states that the director denied the application in error, before the expiration of the 30-day period permitted for the applicant to respond.¹

Under the terms of 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 provides 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. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

On September 19, 2007, the director issued a Notice of Intent to Deny (NOID) to the applicant.² The director found that based on the applicant's testimony he is not eligible for class membership.³ On October 4, 2007 the director denied the application, stating that the applicant failed to respond to the NOID of September 19, 2007.

Although, as stated in 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed, since the director failed to provide the applicant sufficient opportunity to respond to the NOID prior to denying the application, the director's finding that the applicant abandoned his

¹Counsel also challenges revocation of the applicant's authorization for employment pending appeal. However, since a review of the records of United States Citizenship and Immigration Services (USCIS) reveals that the applicant is currently authorized to obtain employment, it appears that this issue is moot.

²The director previously issued a NOID to the applicant on the same basis of failure to establish class membership. Counsel for the applicant submitted a response to the initial NOID.

³The applicant submitted a written statement at interview that he was not front-desked but was allowed to file an application for legalization in 1990. The applicant also stated that he never attempted to apply for legalization at any time prior to 1990. The applicant's statements at the time of interview were inconsistent with his statements in the instant I-687, and in an initial I-687 application filed in 1990 to establish his CSS class membership.

application is in error and is withdrawn. The director's determination that the applicant did not qualify for class membership is a separate issue that cannot be addressed here. 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 director's decision. Additionally, 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 director's determination that the applicant did not qualify for class membership under the CSS/Newman Settlement Agreements, the appeal must be rejected. However, the director is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q).

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