

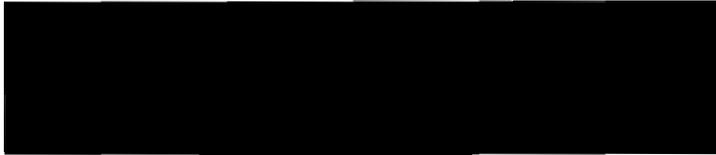
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



**U.S. Citizenship
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FILE: [Redacted] MSC-05-236-14074

Office: LOS ANGELES

Date: **JAN 14 2010**

IN RE: Applicant: [Redacted]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the director of the Los Angeles office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as moot.

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 (LULAC) Class Membership Worksheet. The record reflects that on January 18, 2007, the director denied the application for temporary resident status, finding that the applicant was ineligible for adjustment to temporary resident status because she had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite time period. However, on March 9, 2007, the director re-opened the application, *sua sponte*, and vacated the previous decision. Also on March 9, 2007, the director issued a notice of intent to deny (NOID) the application on the basis of class membership, finding that the applicant was not discouraged from filing during the eligibility period of the legalization program. On June 14, 2007, the director determined that the applicant had not established that she is eligible for class membership pursuant to the CSS/Newman Settlement Agreements for the reasons set forth in the NOID. The director denied applicant's class membership application and administratively closed the application for temporary resident status.

On appeal, the applicant asserts her 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 membership 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 decision 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 March 9, 2007, the director issued a notice of intent to deny applicant's class membership application, because the record revealed that on January 2, 1990, the applicant stated that she had not previously tried applying for legalization because friends told her that she would be rejected because of having received AFDC. The director found that applicant was ineligible for CSS/Newman class membership because applicant was not discouraged from filing during the eligibility period of the legalization program. The applicant was afforded 30 days to respond to the notice. On April 3, 2007, the applicant responded by asserting that she does not remember having stated that she had not previously tried applying for legalization because friends told her that she would be rejected because of having received AFDC. On June 14, 2007, the director

denied applicant's class membership application and administratively closed the application for temporary resident status. The director instructed the applicant to appeal the decision to the special master. The applicant filed an appeal to the special master.

The applicant also appealed the director's January 18, 2007 decision, denying the I-687 application, to the Administrative Appeals Office (AAO) by filing a Form I-694 notice of appeal.¹ The director had previously re-opened the application for temporary resident status. Therefore, the applicant's appeal must be rejected as moot.

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. However, the AAO is without authority to review the denial of an application for class membership.

Since the AAO is without authority to review the denial of an application for class membership, the appeal must be rejected. The case will be returned to the director to forward the pending appeal of the denial of class membership to the special master.

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

¹ The Form I-694 was filed on April 4, 2007. On February 26, 2007, a previous Form I-694 had been rejected on due to missing information.