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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CINCINNATI Date: JUL 18 2007  
MSC-05-160-10518

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. All documents have been returned to the office that decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

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 District Director, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action and consideration.

The director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director found that the applicant failed to provide evidence of his claimed residence in the United States between 1982 and 1999. The director also found that the applicant had not previously applied for a "green card or for legalization." Furthermore, the director found the applicant inadmissible under section 212(a)(6)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C), as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status and denied the application.

On appeal, the applicant asserts that he could not remember details of the building he lived in because he was thirteen years old and did not attend school. The applicant claims that he had a problem communicating in English during his legalization interview.

The AAO notes that the director based his decision, in part, on an improper standard. The director's Notice of Decision provides, "[y]ou were unable to provide any evidence of your claimed residence in the United States between 1982 and 1999. . . Further, you stated that you have never previously applied for a green card or for legalization. Based on the foregoing, you are not eligible for the benefit sought." The CSS/Newman Settlement Agreements, paragraph 1 at page 3, provide the following subclass definition for eligibility under the Settlement Agreements:

All persons who were otherwise prima facie eligible for legalization under section 245A of the INA, and who tendered completed applications for legalization under section 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a QDE, during the period from May 5, 1987 to May 4, 1988, and whose applications were rejected for filing because an INS officer or QDE concluded that they had traveled outside the United States after November 6, 1986 without advance parole.

Therefore, the question is whether the applicant *attempted* to file a legalization application, not whether the applicant actually "applied for a green card or legalization." Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, Question #1 provides, "[d]uring the period between May 5, 1987 and May 4, 1988, did you (or a parent or spouse) visit an office of the former Immigration and Naturalization Service (INS) to apply for legalization, but were turned away . . ." The applicant answered "Yes" to this question, indicating that he may be eligible for legalization. However, the adjudication officer who conducted the

legalization interview amended his response on the CSS/Newman (LULAC) Class Membership Worksheet to "No."

Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

A review of the record reveals that the district failed to issue a notice of intent to deny to the applicant explaining the perceived deficiency in the applicant's Class Member Application prior to denying the application. 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 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 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.

Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over this appeal on the issues related to the applicant's admissibility to the United States and his residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 9.

The director found the applicant inadmissible under Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States. The director's Notice of Decision provides:

You applied for and received three B-2 visas between the years of 2000 and 2002. You were asked at your interview on March 30, 2006, if you were interviewed by a United States Officer when you applied for these visas. You answered in the affirmative. You further stated that during these interviews you were asked if you had ever previously been to the United States. You stated that when you were applying for your visa, you told the officer that you had never previously been to the United States. You stated that you gave the officer this testimony because you knew that if you claimed that you had made no previous visits to the United States, you would receive your visa faster than if you told

the officer that you had previously been to the United States. Based on this testimony, you either gave false testimony when you testified at your interview while seeking a visa, or you gave false testimony at your interview in Cincinnati, OH in connection with your application for legalization.

However, this finding is not supported by documentation in the record. The adjudication officer's notes do not support a conclusion that the applicant gave false testimony to the United States Consulate in an attempt to procure a visa. Therefore, the director's determination of inadmissibility, pursuant to Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), is withdrawn.

In conclusion, if the director determines that the applicant has established class membership or if the applicant's appeal is sustained by the Special Master with respect to the issue of his class membership, the district director shall forward the matter to the AAO for the adjudication of his appeal as it relates to the issue of his continuous unlawful residence in the United States during the requisite period.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.