



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-279-13915

Office: Newark

Date: MAY 29 2007

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally 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.


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, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director concluded the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements.

The CSS Settlement Agreement, paragraph 1A, page 3, provides that the following subclass is entitled to relief pursuant to the agreement:

All persons who were otherwise prima facie eligible for legalization under section 245A of the [Immigration and Nationality Act (INA)], and who tendered completed applications for legalization under section 245A of the INA and fees to an [Immigration and Naturalization Service (INS)] officer or agent acting on behalf of the INS, including a [Qualified Designated Entity (QDE)], during the time 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.

The Newman Settlement Agreement, paragraph 1A, page 3, provides that the following subclass is entitled to relief pursuant to the agreement:

All persons who are otherwise prima facie eligible for legalization under Section 245A of the Immigration and Nationality Act ("INA") who attempted to file a completed application and application fee with a representative of the Immigration and Naturalization Service ("INS") including a Qualified Designated Entity ("QDE"), during the period from May 5, 1987, to May 4, 1988, but had the application and fee refused by that representative because they had traveled outside of the United States and returned with a visitor's visa, student visa, or any other type of visa or travel document.

The director determined that the applicant had not established that she traveled outside of the United States from the date of her initial arrival through May 1988. The director determined that based on this information the applicant's legalization application could not have been rejected by the Immigration and Naturalization Service during the period of May 5, 1987 through May 4, 1988. Therefore, the director concluded that the applicant is not a class member as defined under the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she is eligible for temporary resident status. The applicant claims that during the period of May 5, 1987 until May 4, 1988, she traveled to Canada for a

couple of weeks and then returned to the United States. The applicant maintains that her legalization application was rejected because of her travel during this time period. The applicant contends that she did not provide this information during her interview because of a misunderstanding.

The settlement agreements stipulate that 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 thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency. CSS Settlement Agreement paragraph 7, page 4; Newman Settlement Agreement paragraph 7, page 7.

A review of the record reveals that the director failed, pursuant to the CSS/Newman Settlement Agreements, to issue a notice of intent to deny to either the applicant or counsel explaining the perceived deficiency in the applicant's class membership application. Accordingly, the decision of the director, finding the applicant statutorily ineligible for temporary resident status under the CSS/Newman Settlement Agreements, is withdrawn.

The settlement agreements stipulate that once the applicant has had an opportunity to respond to a notice of intent to deny, 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 denial 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. The denial of an application for class membership may be appealed within thirty (30) days to a Special Master. CSS Settlement Agreement paragraph 9B, page 5; Newman Settlement Agreement paragraph 9B, page 7-8.

ORDER: The decision of the director is withdrawn. This matter is remanded for further action and consideration on the denial of the applicant's class membership.