

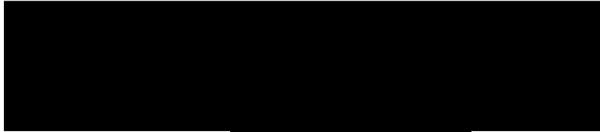
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MSC-06-034-12557

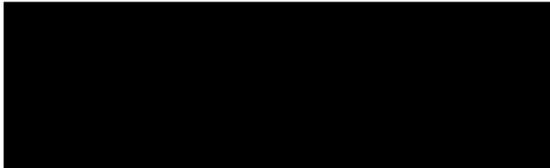
Office: NATIONAL BENEFITS CENTER

Date: SEP 06 2007

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:



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. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director found that the applicant had failed to prove by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of Section 245A of the Immigration and Nationality Act, and that he is otherwise eligible for adjustment of status under this act. As a result, the director denied the application.

On appeal, the applicant submitted further evidence in the form of two affidavits. In addition, the applicant's attorney reiterated that the applicant meets the requirements for adjustment to temporary resident status and explained that the applicant was never interviewed by an immigration officer in relation to his adjustment application.

Each applicant for temporary resident status shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

A review of the record reveals that the applicant was never interviewed in relation to his application for temporary resident status, and none of the exceptions to the interview requirement apply in this case. Accordingly, the decision of the director is withdrawn. The case will be remanded for the applicant to be scheduled for an interview with an immigration officer.

After the interview is conducted and the complete record is reviewed, then the director shall issue a new decision to the applicant. If the director finds that the applicant is not eligible for temporary resident status, then the director shall forward the matter to the AAO for the adjudication of the applicant's appeal as it relates to the issue of whether the applicant has demonstrated eligibility for temporary resident status.

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