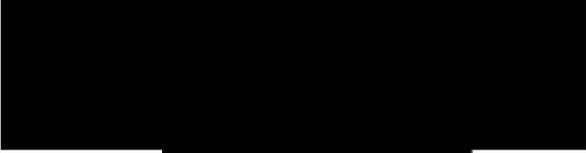




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CLEVELAND (CINCINNATI) Date: AUG 01 2008
MSC-05-230-15653

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:
[REDACTED]

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.

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 District Director, Cleveland. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 Class Membership Worksheet, on May 18, 2005 (together, the I-687 Application). The district director concluded that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and indicated that he would submit a brief within 30 days. The record of proceeding does not contain an appeal brief from counsel. On June 12, 2008, the AAO sent counsel a facsimile regarding the absence of the aforesaid appellate material. As of this date, the AAO has not received any additional evidence from counsel. Therefore, the record is complete.

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 director did not issue a Notice of Intent to Deny (NOID) to the applicant explaining the perceived deficiency in the applicant's Class Member Application. Therefore, the director failed to provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency prior to denying the application. The director denied the application on the ground that the applicant is not a class member. The director instructed the applicant to appeal the decision to the Administrative Appeals Office (AAO) by filing a Form I-694, Notice of Appeal.

The director's instruction for the applicant to appeal the decision to the AAO is in error and is withdrawn. 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 denial of the application. The CSS/Newman Settlement Agreements stipulate that an applicant should be notified of his or her right to seek review of the denial of Class Membership Application by a Special Master.

Since the AAO is without authority to review the denial of the application, the appeal must be rejected, despite the fact that the director stated an appeal could be filed. However, the director should reopen the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q) and issue a NOID, providing the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency.

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