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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: MSC-06-097-10676

Office: NATIONAL BENEFITS CENTER

Date: **DEC 11 2008**

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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

John F. Grissom, Acting 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 director of National Benefits Center (NBC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for further action and consideration.

The NBC director denied the application, finding that the applicant had failed to provide evidence that he entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status for the duration of the requisite period. In his notice of decision, the director observed that the applicant submitted documents that are irrelevant, and thus, not credible in connection with his claim of continuous residence in the United States since 1981.

On appeal, the applicant states that he has submitted numerous documents to prove his eligibility for temporary resident status and asserts that U.S. Citizenship and Immigration Services (USCIS) wrongfully denied his application. The applicant also claims that USCIS abused its discretion by not giving him an opportunity to be interviewed. The record indicates that the applicant waives the right to submit a written brief or statement.

Pursuant to 8 C.F.R. § 245a.2(j), 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.

A review of the record in this case 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 decision.