

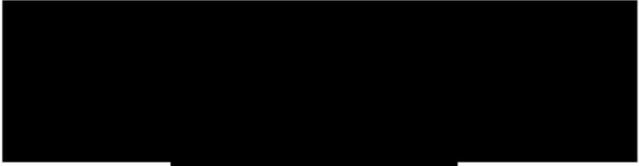
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-055-16558

Office: NEW YORK

Date: DEC 22 2008

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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, 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, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected, and the matter will be remanded for further action and consideration.

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 November 24, 2004. The applicant was scheduled to appear for an interview related to this application at the New York District Office on March 9, 2006. On March 7, 2006, the applicant submitted a request to reschedule his interview. The applicant submitted a letter from [REDACTED] advising the applicant to take rest, due to his acquired pneumonia, from March 7, 2006 to March 10, 2006. The applicant's interview was rescheduled for October 10, 2006. On October 8, 2006, the applicant submitted a second letter from [REDACTED] in which he advised the applicant to take rest from October 8, 2006 to October 12, 2006, due to his acute back pain at the lumbo-sacral area. On February 1, 2007, the director determined that the applicant had failed to provide evidence that would constitute "good cause" for a rescheduling of his interview. The director thereafter denied the application due to abandonment.

The regulation at 8 C.F.R. § 103.2(b)(13)(ii) provides if United States Citizenship and Immigration Services (USCIS) requires an individual to appear for an interview, but the person does not appear, the application shall be considered abandoned and denied unless by appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear. Pursuant to this regulation, the director concluded that the applicant's request to reschedule did not excuse his failure to appear. The director's denial of this application due to abandonment may not be appealed to the AAO. 8 C.F.R. § 103.2(b)(15).

It is noted that the director informed the applicant that the denial constituted a final decision on his application. On February 16, 2007, the applicant filed an appeal with the New York Office. The applicant stated that he was unable to make the initial interview or the second interview with USCIS due to his illnesses and requested a rescheduling of the same. He further states that he will be submitting evidence in the record to support his claim.

Since the AAO is without authority to review the denial of the application, the appeal must be rejected. However, the director is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q). Therefore, the case will be returned and the director may consider the applicant's response as a motion to reopen.

**ORDER:** The appeal is rejected.