

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

L1



FILE: [REDACTED]
XBT 93-084-3019

Office: BOSTON (PROVIDENCE)

Date: **JUN 03 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

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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 Director, Providence Field Office, denied the application for temporary resident status under section 245A of the Immigration and Nationality Act (INA or Act), 8 U.S.C. § 1255a, on January 17, 2007. That decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, as the record indicates that no application for temporary resident status under section 245A of the Act was timely filed.

The applicant's administrative record includes evidence establishing that the applicant applied for class membership in a legalization class-action lawsuit by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [Catholic Social Services or CSS lawsuit, later renamed *CSS v. Thornberg*]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," filed with the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services, or CIS) on October 8, 1992. The record also includes a Form I-485, Application to Register Permanent Resident or Adjust Status, pursuant to section 1104 of the LIFE Act (I-485 LIFE Legalization Application), which the applicant filed on May 20, 2002. On January 31, 2006, the applicant was interviewed by the Providence Field Office regarding her Form I-687, her application for class membership and her I-485 LIFE Legalization Application.¹

The record indicates that both the director and counsel for the applicant may have erroneously concluded that the applicant had, by submitting a Form I-687, applied for temporary resident status, either pursuant to the terms of the *CSS* or *Newman* (LULAC) Settlement Agreements or otherwise.² The AAO notes that no such separate application is contained in the record, and that the sole application that was pending an adjudication by CIS in 2006 was the I-485 LIFE Legalization Application.

The Form I-687 submitted in support of the applicant's 1992 request for class membership is signed by the applicant and dated September 5, 1992. It is therefore neither a timely filed application under section 245A of the Act, which prescribes a one-year filing period from May 5, 1987 through May 4, 1988 (*see* section 245A(a)(1)(A) of the Act; 8 C.F.R. § 245a.2(a)); nor a timely filed application under the *CSS*/*Newman* Settlement Agreements, which permit late submissions under section 245A of the Act from

¹ The AAO notes that the director issued three separate decisions, or Notices of Denial, following the 2006 interview. Two of the decisions were denials of class membership and of the Form I-687 "Application for Status as Temporary Resident." However, neither the issue of class membership nor a Form I-687 Application was properly before CIS at that time. Only the applicant's I-485 LIFE Legalization Application had been properly filed and should have been adjudicated. In her adjudication of the I-485 LIFE Legalization Application, the director appropriately addressed the issue of residence and concluded that the applicant had failed to provide credible and probative documentation to corroborate her claim of entry into the United States prior to 1982 and continuous residence for the requisite period under section 245A of the Act. The director also found, however, that the applicant was not a class member pursuant to the *CSS*/*Newman* Settlement Agreements, an issue not before her. The director denied the application; that decision was not appealed to the AAO.

² In 1992, when the applicant applied for class membership, two class action lawsuits were pending: *Catholic Social Services, Inc. (CSS) v. Thornburgh*, No. CIV—S—86—1343—LKK (E.D. Cal. Filed Nov. 12, 1986), and *League of United Latin American Citizens (LULAC) v. INS*, Cv. No. 87—04757 WDK (JRx) (C.D. Cal. Filed July 22, 1987). Pending final resolution of the cases, individuals who thought they qualified as class members could submit an application for class membership along with a "skeletal" Form I-687; if approved for class membership at that time, they were issued employment authorization.

May 24, 2004 through December 31, 2005.

The Form I-687 in the record was adjudicated and denied by the director as if it had been a properly filed application for temporary resident status. As the record does not contain a properly filed application for temporary resident status, the director's adjudication of the Form I-687 was done in error. Despite the director's instructions to the applicant that the decision could be appealed to the AAO, the AAO finds that neither the adjudication nor an appeal is available to the applicant under Section 245A of the Act. The appeal will therefore be rejected.

ORDER: The appeal is rejected. This decision constitutes a final notice of ineligibility.