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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-131-12130

Office: NEWARK

Date: **MAR 19 2008**

IN RE:

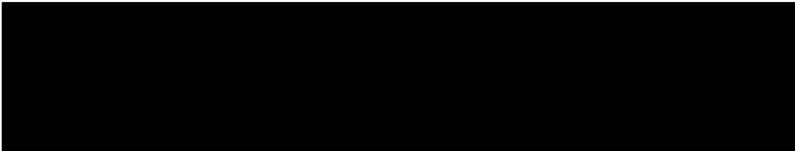
Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that 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, 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 District Director, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the District Director 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. The director found that the applicant was granted temporary resident status on March 5, 1988. The director noted that the applicant subsequently failed to file an application to adjust status to permanent resident within 43 months of this approval. The director concluded that since the applicant was already granted temporary residence on March 5, 1988, she is not eligible for class membership under the CSS/Newman Settlement Agreements.

The AAO notes that an FBI report based upon the applicant's fingerprints reveals that on August 10, 1992 she was arrested in Hudson County, New Jersey and charged with *receiving a stolen vehicle* in violation of section 2C:20-7 of the New Jersey criminal code. The FBI report indicates on August 14, 1992, the applicant was convicted of the *unauthorized use of a vehicle* under section 2C:20-10a of the New Jersey criminal code. The New Jersey criminal code delineates that a person convicted under this section has committed a disorderly persons offense. The sentencing guideline for a disorderly persons offense is a sentence of imprisonment that shall not exceed six months. The FBI report shows that the applicant was sentenced to one year probation for this offense.

On appeal, counsel for the applicant asserts that she is eligible for temporary resident status under the LIFE Act.¹ Counsel asserts that the applicant was 14 years old when she was granted temporary resident status. Counsel further asserts that the applicant was abused as a child and then placed in foster care. Counsel requests a favorable exercise of discretion in this matter.

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.

¹ Counsel for the applicant has erroneously cited to the Form I-485, Application to Adjust Status, under section 1104 of the Legal Immigration Family Equity Act (LIFE Act). The application at issue in this proceeding is the denial of the applicant's Form I-687, Application for Status as a Temporary Resident, under section 245A of the Immigration and Nationality Act.

A review of the record reveals that the district director failed to issue a notice of intent to deny to the applicant explaining the perceived deficiency in her Class Member Application prior to denying the application. If the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provides the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to both counsel and the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of her right to seek review of such denial by a Special Master. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

The director's instruction for the applicant to file a Form I-694, Notice of Appeal, with 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 her right to seek review of the denial of her 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 is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q).

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