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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 248 11150

Office: LOS ANGELES

Date: OCT 07 2008

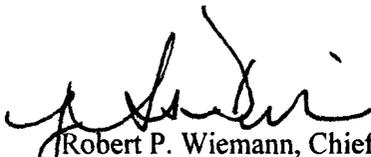
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of  
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. 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 Los Angeles, and the matter is now ostensibly before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director determined that the applicant has not established that he is eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director concluded that on this basis the applicant is ineligible to adjust to temporary resident status and denied the application.

On appeal, the applicant reiterated he is eligible for temporary resident status under the terms of the CSS/Newman Settlement Agreements.

Under the CSS/Newman Settlement Agreements, 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 provide 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 his or 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.

On December 2, 2005, the director issued a notice of intent to deny (NOID) to the applicant. The director found that because the record contains a previous Form I-687 application timely filed between May 5, 1987 and May 4, 1988 the applicant is ineligible for CSS/Newman class membership. The applicant was afforded 30 days to respond to the notice. The applicant responded to the NOID.

On December 4, 2006, the director issued a decision finding that the applicant failed to overcome the basis for the notice of intent to deny. The director determined that the applicant does not qualify for CSS/Newman class membership. As required by the settlement agreements, the director instructed the applicant to appeal the decision to a Special Master and provided instructions. Rather than appealing to a Special Master as instructed, the applicant sent his appeal to CIS, and it was forwarded to the AAO.

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 his Class Membership Application by a

Special Master. The applicant was so notified and the submission of the appeal to CIS, rather than to the Special Master, was erroneous. The appeal is not correctly before the AAO.

Since the AAO is without authority to review the denial of the application, the appeal to the AAO must be rejected.

**ORDER:** The appeal is rejected.