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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC-06-102-19430

Office: LOS ANGELES

Date: SEP 05 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:

[REDACTED]

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.

Michael T. Kelly

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, 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 District Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 January 10, 2006 (together, the I-687 Application). The district director concluded that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a written statement. On appeal, the applicant stated that she did not receive the director's December 2, 2006 notice of intent to deny class membership in time to respond. However, the applicant also indicates that the notice was sent to her address of record. The director used the same address of record for the applicant when sending her denial letter. The applicant received the director's decision and filed the instant appeal.¹

On appeal, the applicant also states that the regulation that USCIS "has been applying to deny legalization applications as abandoned, 8 C.F.R. § 103.5 did not exist in 1987 – 1988." The director did not base her denial on abandonment, but rather "after reviewing [the applicant's] administrative file, application, [] testimony," the director concluded that the application "failed to establish that [she met] the definition of class member."

Finally, the applicant also states that she "entered the United States before January 1, 1982" and "was continuously physically present in the United States" from November 6, 1986 until the date that she was turned away by the INS when trying to apply for legalization.

Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

¹ It is noted that the Form G-28 and the applicant's letter on appeal list the applicant's address as apartment #39, whereas her address of record prior to this time appears to be #93. Citizenship and Immigration Services records do not reflect that the applicant has submitted a notice of this apparent change of apartment numbers.

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.

A review of the record reveals that the district director issued a Notice of Intent to Deny (NOID) to the applicant explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency prior to denying the application. The applicant did not provide a response to the NOID. The director denied the application on the ground that the applicant is not a class member. The director instructed the applicant to appeal the decision to the CSS/Newman Special Master and provided an address for the appeal.

The director's instruction for the applicant to appeal the decision to the Special Master is correct. 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 Class Membership Application by a Special Master. The director decision notified the applicant that an appeal of the decision should be sent to the Special Master.

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).

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