



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-355-10524

Office: LOS ANGELES

Date: **AUG 05 2009**

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.

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

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 denied the application after determining that the applicant had not established that he was 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 asserts his claim of eligibility 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. See CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

On April 6, 2007, the director issued a Notice of Intended Denial of Class Membership (NOIDCM) to the applicant. The director found that based on the applicant's testimony he was not eligible for CSS/Newman class membership. The director noted that the applicant answered "yes" to question number one on the Class Membership Worksheet, but indicated on his Form I-687 filed in 1991 that a representative from Casa Latina told him that he did not qualify for amnesty and that Casa Latina was not recognized as a QDE during the 1987-1988 legalization period. The applicant responded to the NOIDCM by stating that he was nervous on the day of his interview and apologized for any misinformation he may have conveyed during the interview. The applicant stated that he tried to apply for amnesty in 1987 and was turned away because of his trip outside the United States. On May 4, 2007, the applicant was issued a denial notice where the director determined that the applicant did not qualify for CSS/Newman class membership. The director noted that although the applicant claimed to have been turned away because of his absence from the United States in 1987, he did not list any absences in 1987 on

his Form I-687 application. The director instructed the applicant to appeal the decision to an appointed Special Master.

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 or 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. The record reflects that the class membership determination was also appealed to the Special Master.

ORDER: The appeal is rejected.