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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-210-10656

Office: LOS ANGELES

Date: FEB 26 2009

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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, 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 Director, Los Angeles. The matter is now before the Administrative Appeals Office on appeal. The director's decision is withdrawn and the matter will be remanded for further action consistent with this decision.

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 determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant was interviewed by an immigration officer on October 16, 2006 and that the affidavits submitted were not credible or amenable to verification. The director also noted that information contained in the applicant's immigration applications was inconsistent. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the applicant was never given an opportunity to be interviewed. He further asserts that the applicant was present on October 16, 2006 for his immigration interview but was told by an officer of the United States Citizenship and Immigration Service (USCIS) that his file could not be located, that his interview would be rescheduled, and that he would receive notice of the rescheduled date. Counsel asserts that by refusing to allow the applicant an opportunity to present oral evidence, the decision disregarded the standard of proof illustrated in *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm. 1989).

In the instant case, the record lacks any evidence to demonstrate that the applicant was interviewed on October 16, 2006, as required, regarding his application for Temporary Resident Status. Neither is there evidence in the record to demonstrate that the applicant ever received notice that his immigration interview had been rescheduled. The record of proceeding contains a note from an USCIS officer on the Notice to Appear dated October 16, 2006, that states that a request was being made for the applicant's file so that the applicant's interview could be rescheduled. The failure to provide an interview on the Form I-687 application raises questions regarding the basis of the decision.

The director's decision is withdrawn. The record will be remanded to the director to provide the applicant with an interview and to reconsider the applicant's Form I-687 application. If the decision is adverse to the applicant, it shall be certified to the AAO.

ORDER: The record is remanded for action consistent with this decision.