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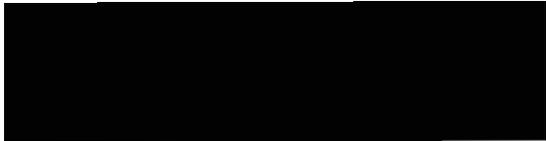
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-06-029-11108

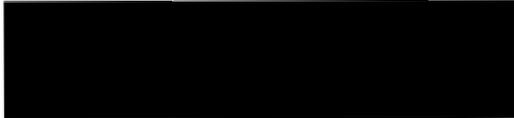
Office: LOS ANGELES

Date: JAN 16 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:



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 Class Membership under *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 and the Application for Status as a Temporary Resident pursuant to the terms of the CSS/Newman Settlement Agreements was administratively closed by the Director, Los Angeles. This 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 applicant's Class Membership Application, finding that she failed to establish that she meets the class member definition. Pursuant to the denial of the applicant's Class Membership Application, the director administratively closed her Form I-687 application.

On appeal, counsel for the applicant submitted a Form I-694 Notice of Appeal of Decision to the AAO.

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. CSS Settlement Agreement paragraph 7 at page 4; Newman Settlement Agreement paragraph 7 at page 7. 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. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7. 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. *Id.*

On November 13, 2006, the director issued a Notice of Intent to Deny (NOID) based on a finding that the applicant was not a class member to the applicant. In the NOID, the director stated that because the applicant testified during her interview with an immigration officer that she failed to apply for legalization because she was late and missed the filing deadline. The director determined that the applicant did not meet the definition of a class member pursuant to the CSS/Newman Settlement Agreements and therefore, stated that she intended to deny the applicant's claim of class membership. The applicant was afforded 30 days to respond to the notice. The applicant responded to the NOID with a statement from counsel, in which the applicant asserted that she was not late when she attempted to apply for legalization. Counsel went on to say that the applicant was turned away by the former Immigration and Naturalization Service (INS) when she attempted to apply for legalization in March of 1988. Counsel also asserted that the applicant continuously resided in and maintained continuous physical presence

in the United States during the requisite period. On March 8, 2007, the director issued a Notice of Denial of Class Membership to the applicant. In denying the applicant's Class Membership Application, the director concluded that because of a lack of detail regarding the applicant's explanation that she was turned away when she attempted to apply for legalization during the original filing period, the applicant failed to establish that she meets the class member definition. The director provided instructions for the applicant to appeal the denial to a Special Master appointed under the terms of the CSS/Newman Settlement Agreements.

Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over the denial of a Application for Temporary Resident Status under section 245A of the Immigration and Nationality Act. Here, the applicant's Class Membership Application was denied and her Application for Temporary Resident Status was administratively closed. The CSS/Newman Settlement Agreements stipulate that an applicant should seek review of the denial of his Class Membership Application by a Special Master. The director accordingly provided the applicant with instructions to appeal the denial of her Class Membership Application to a Special Master. Therefore, the AAO is without authority to review the denial of the Class Membership Application, and the appeal must be rejected.

ORDER: The appeal is rejected.