U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: **JUL 07 2009**
MSC-06-025-11957

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, 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, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant.[1] Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 March 25, 2005. The applicant was scheduled to appear for an interview related to this application at the Newark District Office on April 2, 2007. On April 16, 2007, the director determined that the applicant had failed to appear for her immigration interview and had failed to show good cause for why she had failed to report for the interview as scheduled. The director thereafter denied the application due to abandonment.

The regulation at 8 C.F.R. § 103.2(b)(13)(ii) provides if Citizenship and Immigration Services (CIS) requires an individual to appear for an interview, but the person does not appear, the application shall be considered abandoned and denied unless by appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear. Pursuant to this regulation, the director concluded that the applicant's request to reschedule did not excuse her failure to appear. The director's denial of this application due to abandonment may not be appealed to the AAO. 8 C.F.R. § 103.2(b)(15).

It is noted that the director informed the applicant that a denial due to abandonment may not be appealed. See 8 C.F.R. § 103.2(b)(15). On May 6, 2007, the applicant filed an appeal. The applicant stated that her attorney informed her that her immigration interview was being re-scheduled. The director's suggestion that the applicant may file a motion to reopen a proceeding or reconsider a decision shall not be considered for application filed under section 245A of the Act.

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[1] The applicant was represented in this proceeding by the of Irvington, New Jersey. On April 19, 2007, however, pled guilty and was convicted of fraud and misuse of visas/permits, in violation of 18 U.S.C. § 1546(a). Consequently, on November 8, 2007, a final order was issued expelling him from practice before immigration tribunals, effective May 18, 2007, based on his criminal conviction in the U.S. District Court in New Jersey.

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.