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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]
MSC 05 270 11610

Office: CHICAGO

Date:

NOV 06 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:

[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.

Perry Rhew
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, Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The case will be remanded.

The director denied the application because the applicant was found to have abandoned the application. According to the director, a scheduling notice was sent to the applicant at his last known address on April 18, 2006, advising him to appear for an interview on May 8, 2006, but the applicant did not appear on that date and did not request that the appointment be rescheduled.

On May 11, 2006, the director issued a decision denying the application on the ground of abandonment, in accordance with 8 C.F.R. § 103.2(b)(13), which provides that:

[I]f an individual requested to appear . . . for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the . . . interview, or the applicant . . . has not withdrawn the application . . . the application . . . shall be considered abandoned and, accordingly, shall be denied.

The regulation at 8 C.F.R. § 103.2(b)(15) provides generally that “[a] denial due to abandonment may not be appealed, though an applicant may file a motion to reopen under 8 C.F.R. § 103.5.” Under the LIFE Act applicants have no such motion rights. *See* 8 C.F.R. § 245a.20(c). But the regulation does give “the Service director who denied the application” the authority to “reopen and reconsider any adverse decision *sua sponte*.” *See id.*

On appeal, counsel for the applicant states that the applicant did not receive any correspondence from the director after December 2005 when he responded to the director's request for evidence. The record reflects that on the date the director mailed the Form G-56 interview notice, the applicant's address of record was [REDACTED]. However, a review of the record confirms that the April 18, 2006 interview notice, Form G-56, cited in the director's May 11, 2006 decision, as well as the May 11, 2006 denial notice, were mailed to the applicant's old address, [REDACTED].

A review of the record reflects that the applicant's new address was known to U.S. Citizenship and Immigration Services (USCIS) at the time the interview notice was mailed. Based on the documentation of record, therefore, the AAO is persuaded that the applicant did not receive notice from the district office of the interview scheduled for May 8, 2006.

Accordingly, the denial of the application on the ground of abandonment was improper, and will be withdrawn. The matter will be remanded to the director for further consideration and action, in accordance with the authority invested in the director under 8 C.F.R. § 245a.20(c) to “reopen

and reconsider any adverse decision *sua sponte*.” The director should reschedule the applicant for an interview on the application and issue a new decision based on the evidence of record.

ORDER: The decision dated May 11, 2006, is **withdrawn**. The application is remanded to the director for the issuance of a new decision. If the decision is adverse to the applicant, it shall be certified to the AAO for review.