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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
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FILE: [REDACTED] Office: OKLAHOMA CITY Date: OCT 08 2009
MSC: 06 101 25132

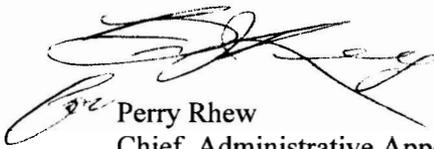
IN RE: Applicant: [REDACTED]

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. All documents have been returned to the office that decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, 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, Oklahoma City, Oklahoma, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the District Director for further action and consideration.

The director concluded that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director noted that the applicant failed to timely file her application for temporary resident status as the application was received on January 9, 2006, after December 31, 2005, the date that the CSS/Newman (LULAC) filing period had ended. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that the director failed to issue a notice of intent to deny as required under the CSS/Newman Settlement Agreements. The applicant provides copies of previously submitted documentation on appeal.

Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

A review of the record reveals that the district director failed to issue a notice of intent to deny to either the applicant or counsel explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency prior to denying the application.

Accordingly, the decision of the district director is withdrawn, and the case will be returned to the director for further action and consideration. If the director finds that the alien 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 provides the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the alien 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 new decision regarding the applicant's eligibility for class membership to both counsel and the applicant. Any new adverse decision and still pending appeal shall be forwarded to the Special Master as designated in paragraph 9, page 5 of the CSS Settlement Agreement and paragraph 9, pages 7 and 8 of the Newman Settlement Agreement for review and adjudication of the applicant's appeal as it relates to her eligibility for class membership.

The director's instruction for the applicant to appeal the decision to the AAO is in error and is withdrawn. 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 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, despite the fact that the director stated an appeal could be filed. 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 and the file is returned to the director for further action and consideration pursuant to the above.