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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

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FILE:

SRC-01-110-51353

Office: NEW YORK

Date:

**SEP 24 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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for Class Membership in the Catholic Social Services/(CSS) Newman Settlement Agreements was submitted by the applicant in September of 1990, prior to dates the Settlement Agreements were 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). Though the applicant did not file a Form I-687 subsequent to the settlement agreements, the Director, New York adjudicated this case as if the applicant had done so and denied the application. The decision 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) to establish class membership in September, 1990.<sup>1</sup> Though the applicant did not file a Form I-687 pursuant to the CSS/Newman Settlement Agreements, the director adjudicated this previously filed Form I-687 as if it had been submitted pursuant to those settlement agreements. In doing so, the director found that the applicant failed to satisfy his burden of proof. Specifically, the director found that the record established that the applicant's first entry into the United States was on May 2, 1985 as a B-2 visitor. The director also found that if the applicant entered the United States on a B-2 visa in August 1981 as alleged, he was not in an unlawful status in a manner known to the government as of January 1, 1982.

On appeal, the applicant submitted a Form I-694 and stated that he began working in the United States in 1981 and that he was residing in an unlawful status in a manner known to the government prior to January 1, 1982.

Beginning on May 24, 2004, and continuing through December 31, 2005, as a result of the CSS/Newman Settlement Agreements, applicants who either had previously established they were class members or were *prima facie* eligible as class members pursuant to those agreements were able to file Forms I-687 for legalization. Those Forms I-687 were then adjudicated on the issues of both class membership and the eligibility of the applicant to adjust to temporary resident status.

In this case, the applicant did not file for legalization pursuant to the CSS/Newman Settlement Agreements during the May 24, 2004 to December 31, 2005 filing period. The Form I-687 in the record was submitted to allow USCIS to determine whether the applicant was a class member rather than to determine his eligibility to adjust to temporary resident status under Section 245A of the Immigration and Nationality Act (Act). Although the director adjudicated the applicant's Form I-687 as though it had been filed pursuant to the CSS/Newman Settlement Agreements, this was done in error.

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<sup>1</sup> A copy of this application was subsequently accepted by the Immigration & Naturalization Service (now United States Citizenship & Immigration Services) for filing on February 26, 2001 under receipt number SRC-01-110-51353. It appears that the receipt number was assigned in error.

Because the applicant did not file the Form I-687 to establish eligibility for legalization but rather filed this form for other purposes, the AAO does not have jurisdiction over the matter.

**ORDER:** The appeal is rejected because of a lack of jurisdiction over the matter. This decision constitutes a final notice of ineligibility.