

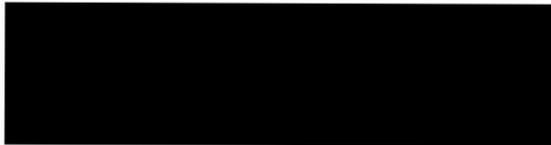
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U.S. Department of Homeland Security  
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FILE: [REDACTED] Office: LOS ANGELES  
MSC-05-355-13184

Date: **SEP 30 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of  
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, 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 administratively closed by the director of the Los Angeles office because the CSS/Newman (LULAC) Application for Class Membership was denied. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the director for further action.

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 (LULAC) Class Membership Worksheet. The director determined that the applicant had not established that she is eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director concluded that on this basis the applicant was ineligible to adjust to temporary resident status and administratively closed the application.

On appeal, the applicant asserts her eligibility for temporary resident status under the terms of the CSS/Newman Settlement Agreements.

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 membership application and provides the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. 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. The decision 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. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

On May 17, 2007, the director issued a notice of intent to deny applicant's class membership application, based upon inconsistencies in the applicant's testimony regarding whether she had previously attempted to apply for legalization. The applicant testified at her interview on the instant I-687 application that in 1987 a prior application for legalization, filed to establish CSS class membership, had been front-desked due to travel. This testimony is inconsistent with the applicant's testimony in 1991 and 1993, in support of the initial I-687 application, that she had never previously applied for legalization because she did not have the necessary documentation. The director found that the applicant was ineligible for CSS/Newman class membership because the applicant did not establish that she was discouraged from filing during the eligibility period of the legalization program. The applicant was afforded 30 days to respond to the notice. On May 31, 2007, the applicant responded by stating that her 1987 application for legalization had been front-desked due to travel. On June 8, 2007, the director denied the applicant's class membership application and administratively closed the application for temporary resident

status.<sup>1</sup> The director instructed the applicant to appeal the decision to the special master. The applicant filed an appeal to the special master. The applicant also appealed the decision to the AAO by filing a Form I-694, Notice of Appeal.

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. However, the AAO is without authority to review the denial of an application for class membership.

Since the AAO is without authority to review the denial of an application for class membership, the appeal must be rejected. The case will be remanded to the director to forward the pending appeal of the denial of class membership to the special master.

**ORDER:** The appeal is rejected and the file is returned to the director for further action pursuant to the above.

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<sup>1</sup> The AAO notes that the director erroneously denied the application before the expiration of the 30-day period permitted for the applicant to respond. Since the AAO is rejecting the appeal, it will be for the Special Master to determine whether the director's error, which did not result in the applicant being unable to file a timely response to the NOID, is harmless.