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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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[REDACTED]

RE: [REDACTED]
MSC 06 101 31083

Office: NEW YORK, NY

Date: **SEP 30 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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further consideration in accordance with the following analysis.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

The director issued a notice of decision dated April 9, 2007 in which she indicated that the application was being denied because the applicant had not shown unlawful residence from a date prior to January 1, 1982 through May 4, 1988. The director then issued an amended notice of intent to deny in this matter in which she indicated that she intended to deny the application because the applicant had failed to demonstrate that he had filed a written request for class membership in a relevant class action lawsuit prior to October 1, 2000. On May 24, 2007, the director issued a new notice of decision in which she denied the application for the reasons set forth in the May 2, 2007 notice of intent to deny.

An applicant for permanent resident status under the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano). *See* 8 C.F.R. § 245a.10.

The instant application was not filed under the LIFE Act. It was filed under the CSS/Newman Settlement Agreements. There is no similar requirement that CSS/Newman legalization applicants file a written claim for class membership prior to October 1, 2000.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The record indicates that the director adjudicated the application under the LIFE Act, in error. The director has not yet made a determination as to whether the applicant is a CSS/Newman class member, nor has the director yet adjudicated the application on the merits.

The AAO does not have jurisdiction over CSS/Newman Class Membership Applications. The director must first make a finding as to whether the applicant is a CSS/Newman class member. If the director finds that the applicant is not a CSS/Newman class member, the director must deny the request based on a denial of the Class Membership Application and notify the applicant of his right to seek review by a Special Master. The matter will be remanded for the director to determine whether the applicant is a CSS/Newman class member and to otherwise complete the adjudication of the application.²

Finally, this office would add that it appears that in the director's original notice of decision, issued on April 9, 2007, the director defined the requisite period in accordance with LIFE Act requirements, rather than according to stipulations of the CSS/Newman Settlement Agreements. That is, the director indicated that the requisite period ended on May 4, 1988 in the April 9, 2007 notice of decision. Thus, the AAO would point to the following interpretation of the "date of filing" under the CSS/Newman Settlement Agreements, as this is used to define the requisite period in CSS/Newman legalization adjudications.

Under the CSS/Newman Settlement Agreements, U.S. Citizenship and Immigration Services (USCIS) shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. *See* CSS/Newman Settlement Agreements.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

² The AAO notes that the applicant made the following apparently contradictory claims on his March 14, 2007 sworn statement regarding CSS/Newman class membership: that he never left the United States during the requisite period; and that during the initial Form I-687 filing period, a Qualified Designated Entity (QDE) turned him away when he attempted to file the Form I-687 because the representatives at the QDE stated that he had departed the United States after January 1, 1982 and returned with a student visa during the requisite period.

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

ORDER: The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision. If the director determines that the applicant is not a CSS/Newman class member, the applicant should be notified of his right to have a Special Master review the denial of the Class Membership Application. If the director denies the application on the merits of that request, the matter is to be certified to the AAO for review.