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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

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U.S. Citizenship
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Services



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FILE: [REDACTED]
MSC-06-098-10448

Office: OKLAHOMA CITY

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:

SELF-REPRESENTATION

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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

Perry J. 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, 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 found the applicant ineligible for the benefit sought because he was not a class member pursuant to the terms of the CSS/Newman Settlement Agreements. As such, the director issued a notice of denial of class membership on October 4, 2007.

On appeal, the applicant claims that the director has violated the terms of the CSS/Newman Settlement Agreements when he failed to issue a Notice of Intent to Deny (NOID) before issuing the notice of denial (NOD).

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 applicant for class membership, the applicant . . . shall be sent a notice of intended denial 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." 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 notice 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.

A review of the record in this proceeding reveals that the director issued a NOID on August 30, 2007. Based on the evidence submitted along with the application, the director stated that the applicant had failed to provide sufficient evidence to establish that he had resided continuously in the United States since before January 1, 1982 and that he attempted to file the application during the original filing period. The applicant was afforded 30 days to respond to the notice. The applicant responded to the NOID with additional documentation of his residence in the United States. On October 4, 2007, the director issued a NOD, stating that the applicant did not qualify for CSS/Newman class membership because he failed to mention any absence from the United States between November 6, 1986 and March 1988, the date he attempted to file the application. The director further instructed the applicant to appeal the decision to the AAO by filing a Form I-694, Notice of Appeal.

The director's instruction for the applicant to appeal the decision to the AAO in this proceeding is in error and will be withdrawn. The appeal is not properly before the AAO. Under the stipulation of the CSS/Newman Settlement Agreements as noted above, the applicant should have been notified of his right to seek review of the denial of his Class Membership Application

by a Special Master. The AAO has no authority to review the denial of the applicant's class membership, despite the fact that the director stated an appeal could be filed.

Nevertheless, the director is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q) should he or she, upon a complete review of the evidence, find that the applicant is a class member.

ORDER: The director's instruction to appeal the denial to the AAO is withdrawn. The appeal is rejected and the file is returned to the director for further action and consideration pursuant to the above.