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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC-05-194-19608

Office: ATLANTA

Date:

FEB 03 2010

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, your file has been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 of the Atlanta office. 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 District Director for further action and consideration.

The director determined that the applicant has not established that he is eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director concluded that on this basis, the applicant is ineligible to adjust to temporary resident status and denied the application.

On appeal, counsel for the applicant asserts the applicant's 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 (NOID), which explains any perceived deficiency in the applicant's Class Member Application, and provide 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 reveals that the district director failed to issue a notice of intent to deny to the applicant 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. The case will be remanded for reconsideration by the director. 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 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 the 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 7.¹

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

¹ In addition, the director's instruction for the applicant to appeal the decision to the AAO is in error. 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.