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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]

FILE:

MSC-05-259-12005

Office: SACRAMENTO

Date:

FEB 12 2010

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.

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, Sacramento. The Administrative Appeals Office (AAO) dismissed the appeal. Subsequently, the applicant filed and the director approved the Form I-690 Application for Waiver of Grounds of Inadmissibility. The AAO *sua sponte* reopens its previous decision. The AAO will withdraw its previous decision and will sustain the appeal.

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 Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director found that the applicant, who was an F-1 student, did not prove that he worked off campus illegally in a manner known to the government. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserted that United States Citizenship & Immigration Services (USCIS) erred in finding that the applicant failed to prove that he was in unlawful status in the United States prior to January 1, 1982 in a manner known to the government.

In a decision dated January 23, 2009, the AAO found that the applicant was a member of the class in *Northwest Immigrant Rights Project, et al vs. USCIS, et al*, 88-CV-00379 JLR (W.D. Was.) (NWIRP), and adjudicated the appeal in accordance with the Stipulation of Settlement approved by the court September 9, 2008. Upon review of the totality of the record, the AAO found that the applicant submitted evidence which corroborated his claim that he entered the United States on a nonimmigrant visa prior to January 1, 1982, and violated his status in a manner known to the government. The AAO accorded substantial evidentiary weight to the documents of record, finding that they were sufficient to meet the applicant's burden of proof of unlawful residence in the United States in a manner known to the government from before January 1, 1982 and throughout the requisite period.

The AAO found, however, that the application could not be approved, as the evidence established that the applicant was inadmissible to the United States on the grounds that he sought through misrepresentation to procure an immigration benefit under the Act, and dismissed the appeal. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A).

The applicant subsequently filed the Form I-690 Waiver of Grounds of Inadmissibility. The director approved the Form I-690 on December 15, 2009. Thus, the applicant is not ineligible for the benefit, and the Form I-697 application may be approved.

The AAO withdraws its decision of January 23, 2009, and sustains the appeal. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.