

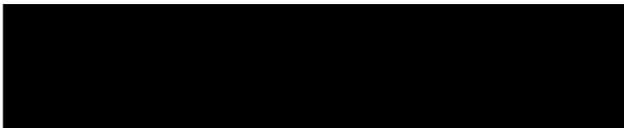
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:



Office: LOS ANGELES

Date: **JUL 26 2010**

IN RE:

Applicant:



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.

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

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 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.

The applicant submitted the instant 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 has not established that he is eligible for class membership pursuant to the CSS/Newman Settlement Agreements, because the applicant was not discouraged from filing during the eligibility period of the legalization program. The AAO found that the record reflects that the applicant's initial I-687 application was accepted for filing on May 4, 1988.¹ Therefore, the director concluded that the applicant was ineligible to adjust to temporary resident status and administratively closed the instant application.

On appeal, the applicant asserts his 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 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 NOID, 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 November 17, 2006, the director issued a notice of intent to deny the applicant's class membership application, based upon the evidence in the record, reflecting that the applicant's initial I-687 application was accepted for filing on May 4, 1988. The director found that the applicant was ineligible for CSS/Newman class membership because applicant was not discouraged from filing during the eligibility period of the legalization program. The applicant was afforded 30 days to respond to the NOID. The applicant submitted evidence in rebuttal to

¹ The record also reflects that the applicant's initial I-687 application was denied on February 27, 1990, and the AAO dismissed as untimely the applicant's appeal of the decision, filed on February 16, 1996.

the NOID which the director determined did not overcome the grounds stated for the denial.² On June 26, 2007, the director denied the applicant's class membership application and administratively closed the application for temporary resident status. The director instructed the applicant to appeal the decision to the special master. The applicant appealed the decision to the Administrative Appeals Office (AAO) by filing a Form I-694, Notice of Appeal.³

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.

ORDER: The appeal is rejected as improperly filed.

² The rebuttal evidence submitted in response to the NOID is a copy of the 1990 notice of decision on the initial I-687 application, a copy of a 1990 W-2 Form and California Resident Income Tax Return, a copy of a 1991 W-2 Form and Form 1040, and a witness statement regarding applicant's continuous residence in the United States for part of the requisite statutory period.

³ The record does not reflect that the applicant also filed an appeal to the special master.