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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

L1

FILE:

Office

Date:

JUN 29 2010

IN RE:

Applicant:

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

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, Philadelphia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn. The appeal will be remanded for further action and consideration.

The director denied the Form I-687, application for status as a temporary resident, finding that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and thereafter resided continuously in the United States until the date of filing the application. Specifically, the director noted that the evidence submitted was neither sufficient nor credible to meet the applicant's burden of proof.

On appeal, the applicant states that the director wrongly denied the application, and requests the opportunity to prove his case. The applicant requests an interview.¹

Upon review, the record does not contain any evidence to establish that the applicant filed a timely written claim for class membership in one of the legalization class action lawsuits. Accordingly, the application is not approvable under the [REDACTED]. The record, however, does not reflect that the director ruled on the threshold issue of the applicant's class membership. The applicant's class membership is not an issue under the jurisdiction of the AAO. Thus, the matter will be remanded in order for the director to rule on whether the applicant is a member of one of the legalization class action lawsuits.

On remand, the director shall make a determination on whether the applicant is a class member. If he finds that the applicant does not appear to be a class member, he shall issue a Notice of Intent to Deny explaining the perceived deficiency in the applicant's Class Member Application prior to denying the application. Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. The CSS/Newman Settlement Agreements provide that if the director finds that an applicant 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 Member Application and provides the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had the 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

¹ The record does not establish that the applicant was interviewed prior to entry of the director's decision.

[REDACTED]

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Master. CSS Settlement Agreement paragraph 8 at page 5; [REDACTED]

[REDACTED]

Should the director find that the applicant is a [REDACTED] member, he must schedule the applicant for an interview prior to the entry of a decision on the case. 8 C.F.R. § 245a.2(j).

Accordingly, the case is remanded for a determination of the issue of the applicant's class membership; for an interview of the applicant if he is determined to be a class member; and for the entry of a new decision in accordance with the foregoing.

ORDER: This matter is remanded for further action and consideration pursuant to the above.