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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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FILE:



Office: CHERRY HILL

Date:

SEP 15 2010

IN RE:

Applicant:



APPLICATION: Application for Temporary Resident Status under 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 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, 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 Cherry Hill office. The matter is now before the AAO on appeal. The AAO will dismiss 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because 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 time period.

The director also denied the application on the basis that the applicant was not a CSS class member. Although the director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of his admissibility, as well as whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that he was eligible for class membership.

The AAO notes that the decision of the director incorrectly states, at page four, that the applicant is inadmissible because he departed the United States in 2005, after filing the I-687 application.<sup>1</sup> For purposes of section 212(a)(9)(B)(ii) of the Act, a legalization application for lawful temporary residence pending through an administrative appeal qualifies as a period of authorized stay by the Attorney General. Because a pending legalization application for lawful temporary residence qualifies as a period of stay authorized by the Attorney General, the applicant is not inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II). Therefore, this part of the director's decision will be withdrawn.

On appeal, counsel for the applicant states that neither he nor the applicant received a copy of the notice of decision (NOD).<sup>2</sup> Counsel states that he will be filing a brief and/or additional evidence within 30 days. Counsel has not submitted a brief. The applicant has not submitted any additional evidence on appeal.

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<sup>1</sup> The record reveals that the director made this determination based upon counsel's request for a rescheduling of the applicant's interview based upon the applicant's being in India.

<sup>2</sup> The AAO notes that attorney [REDACTED] has filed the instant motion on the applicant's behalf, and has provided a completed Form G-28, Notice of Entry of Appearance as Attorney or Representative. Since, [REDACTED] has been suspended from practicing before the Department of Homeland Security effective May 7, 2008, he has not been provided a copy of this decision.

The record reflects that a copy of the NOD was mailed to the applicant at his address of record, and to the attorney of record. The evidence of record does not reflect that the NOD was returned by the postal service. The AAO finds that the director issued the NOD as required, and declines to reissue the NOD.

Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.