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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: NOV 30 2011 Office: NEW YORK FILE: [redacted]

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.

Elizabeth McCormack

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, New York. The director's decision was certified to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn. This matter will be remanded for a new interview and further action and consideration.

The applicant's Form I-687 application was initially denied by the director because the applicant had not established that he was in continuous unlawful status for the duration of the requisite period. The applicant appealed the decision to the AAO. On October 5, 2009, the AAO withdrew the director's decision finding that the applicant had established continuous unlawful residence in the United States. The AAO sustained the appeal and returned the application to the director to continue with the adjudication of the application for temporary residence status.[1]

Upon remand, the director scheduled the applicant for an interview on the Form I-687 application on June 24, 2010. The applicant failed to appear, and failed to request a new interview prior to the scheduled interview.

In her decision denying the application on remand, the director noted that counsel for the applicant stated that the applicant was unable to appear for his interview because he had to return to Bangladesh due to his mother's death. The director stated, however, that the evidence of the applicant's flight to Bangladesh was submitted a month after the scheduled interview date. The director also stated that according to counsel, the applicant may not return from Bangladesh. On August 18, 2010, the director denied the application under the regulation at 8 C.F.R. § 103.2(b)(13), stating that the applicant abandoned his application.[2]

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

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[1] The October 5, 2009 AAO decision will not be repeated here. The discussion in the decision is incorporated herein by reference.

[2] The director failed to certify her decision for review by the AAO. On March 24, 2011, the AAO gave the applicant notice of certification and provided him with 30 days to respond. The applicant did not submit a response to the AAO's notice of certification.

As the director denied the application under the abandonment regulation on August 18, 2010 in violation of the 2009 court order in *CSS v. Michael Chertoff*, the director's decision is withdrawn. The matter will be remanded for the continuation of the application for temporary residence.

The regulation at 8 C.F.R. § 245a.19 states:

> (a) All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed, except that the adjudicative interview may be waived for a child under the age of 14, or when it is impractical because of the health or advanced age of the applicant. Applicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution. Applications for LIFE Legalization adjustment may be denied without interview if the applicant is determined to be statutorily ineligible.

The regulation at 8 C.F.R. § 245a.19(a) specifies that an applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. The AAO will remand the case for the director to reschedule the applicant's interview for good cause and to proceed with the application for temporary residence as set forth in the previous AAO decision dated October 5, 2009.

ORDER: The director's decision is withdrawn. The director shall reschedule the applicant's interview and continue the adjudication of the Form I-687 application pursuant to the discussion in the AAO's October 2009 decision. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.