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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-101-28168

Office: NATIONAL BENEFITS CENTER

Date: AUG 08 2008

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:

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.

Robert P. Wiemann, 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, National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

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, on January 9, 2006 (together, the I-687 Application). The director denied the application based on the determination that the applicant was ineligible to adjust to temporary resident status because he had been convicted of several felonies in the United States.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a written brief. In his brief, the applicant stated that his two minor children, born in the United States "will suffer exceptional and extremely unusual hardships" if he is denied temporary residence because he supports them and they will be forced to live in Mexico as well. With regards to his criminal record, the applicant states that he has been "punished for his crimes" and "has not run afoul of the law again since the occurrence of the crime [sic] in 1990." As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or

nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record of proceeding contains the applicant's felony complaint, the applicant's guilty plea, the Superior Court of the State of California for the County of Orange minute order, and the abstract of judgment – prison commitment for five felony convictions. The record reflects that on April 11, 1990, the applicant was arrested by the Santa Ana Sherriff's Office. On May 31, 1990, the applicant was convicted of rape by force, kidnapping, oral copulation with force, assault with a deadly weapon, and forceful sexual penetration. The applicant received a ten-year sentence to be served concurrently for all five counts by the Superior Court of the State of California for the County of Orange. (Docket No. C-79461)

Pursuant to 8 C.F.R. § 245a.2(c), one felony conviction or three misdemeanor convictions would render the applicant ineligible for adjustment to permanent resident status. The applicant has five (5) felony convictions. These convictions render the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c).

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