

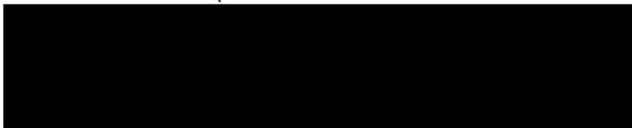
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-067-11454

Office: LOS ANGELES

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 December 6, 2005 (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 one felony in the United States.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and documents already in the record of proceeding. On the Form I-694, the applicant explains his criminal record by stating that he is a "victim who happened to be at the wrong place at the wrong time and around the wrong people." 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 following court dispositions for arrests:

- The record reflects that on June 11, 2005, the applicant was arrested by the Los Angeles Police Department. On July 14, 2005, the applicant pled guilty to a violation of section 11350(A) H & S Felony – Possession of Narcotic Controlled Substance. The Superior Court of California County of Los Angeles ordered a deferred entry of judgment for 18 months, ordered that the applicant participate in a rehabilitation program, and ordered that the applicant pay a \$100 administrative fee. On September 13, 2006, the Superior Court of California County of Los Angeles continued the case until January 11, 2007.<sup>1</sup> (Case No. [REDACTED])
- The record reflects that on February 27, 2005, the applicant was arrested by the Los Angeles Police Department. On February 28, 2005, the applicant pled *nolo contendere* to a misdemeanor violation of section 23152(B) VC and was convicted by the Superior Court of California County of Los Angeles. The applicant was placed on probation for 36 months, ordered to serve 15 days in the Los Angeles County Jail less credit for 3 days, ordered to pay a fine in the amount of \$1,671, perform 13 days of Cal Trans, ordered to attend a 6 month first offender alcohol and other drug education and counseling program, and a 6 month suspension of driving privileges. (Case No. [REDACTED])

The AAO finds that the applicant is ineligible for the benefits sought, because of his felony conviction. Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

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 one felony conviction. The applicant's felony conviction renders the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c). Accordingly, the appeal must be dismissed.

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

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<sup>1</sup> The AAO notes that the most recent court docket entry for this matter in the record of proceeding is dated October 10, 2006.