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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:

MSC-06-046-12396

Office: HOUSTON

Date:

SEP 02 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 District Director, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because, on October 5, 2006, the applicant testified under oath that he was arrested on four different occasions. A Form I-72 Request for Evidence was issued requiring the applicant to submit the court documents of each arrest. In response, the applicant submitted evidence of the dispositions of two of the four arrests. On November 9, 2006, the director issued a Notice of Intent to Deny (NOID) requesting the applicant submit the court documents for the other two arrests. The applicant failed to submit the required documents. Accordingly, on December 12, 2006 the director denied the application. On appeal, the applicant admitted that he did not have the records for the two remaining arrests and requested additional time to locate them.

Applicants are not eligible for temporary resident status if they have been convicted of a felony, or three or more misdemeanors. See 8 C.F.R. § 245a.2(u)(1)(iii). "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 applicant was arrested for *Failure to Stop and Give Information*, a misdemeanor in violation of Texas law on March 13, 2005. The charge was subsequently dismissed on April 13, 2005. He was also arrested for *Driving While Intoxicated* on July 24, 1992, and was convicted on January 13, 1993. The applicant testified that he was arrested for *Driving While Intoxicated* on two additional occasions, in Houston, Texas. No records have been submitted regarding these additional two arrests.

Section 245A(b)(1)(C) of the Act provides that the alien "must establish that he is (i) admissible...and (2) has not been convicted of any felony or 3 or more misdemeanors." Accordingly, since the applicant has testified under oath that he was arrested on three separate occasions for *Driving While Intoxicated* and on one occasion for *Failure to Stop and Give*

*Information*, and he has failed to provide evidence regarding two of the four arrests, the applicant has not established that he “has not been convicted” of the offenses in question and the applicant has not met the requirements of 8 C.F.R. § 103.2(b)(2)(i) and (ii). Thus, the applicant has not met his burden of proof and the appeal must be dismissed. *See* Section 245A(b)(1)(C) of the Act; 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5).

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