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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-06-102-19318

Office: LOS ANGELES

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:

SELF-REPRESENTATION

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.

*for* *Michael T. Kelly*  
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, Los Angeles. 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 10, 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 she had been convicted of a 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 a written statement. On appeal, the applicant states that on "November 28, 2000, the probation department recommended to the court, that [the applicant's] sentence be reduced to a misdemeanor sentence and expunged under the provision of section 1203.4 of the California Penal Code." The applicant also mentions the constitution of the United States, due process and double jeopardy and states that "in all fairness," her application should be granted. 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 reflects that on July 23, 1994, the applicant was arrested by the Bakersfield Sheriff's Department. On November 18, 1994, a jury returned a verdict of guilty as to a count 1, violation of HS 11351 - Possession Purchase for Sale Narcotic Controlled Substance. On December 24, 1994, the applicant filed a notice of appeal. On January 24, 1996, the Superior Court of California, County of Kern affirmed the conviction. On November 30, 2000, the Kern County Probation Department requested an order terminating probation under section 1203.4 of the penal code and the Superior Court of California, County of Kern set aside the conviction, entered a plea of not guilty, and the complaint was dismissed (Case No. [REDACTED]).

The AAO finds that the applicant is ineligible for the benefits sought, because of her felony conviction. The record of proceeding contains the applicant's court disposition from the Superior Court of California, County of Kern. The record reflects that on December 24, 1994, the applicant was found guilty of a felony possession of a controlled substance. On January 24, 1996, the Court of California, County of Kern affirmed the conviction. Despite the court setting aside the applicant's 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).

On appeal, the applicant mentions the constitution of the United States, due process and double jeopardy. The applicant does not explain how double jeopardy applies in the instant matter. Although the applicant argues that her rights to procedural due process were violated, she has not shown that any violation of the regulations resulted in "substantial prejudice" to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. The applicant's primary complaint is that the director denied the application. As previously discussed, the applicant has not met her burden of proof and the denial was the proper result under the regulation. Accordingly, the applicant's claim is without merit.

Finally, the applicant argues that "in all fairness," her application should be granted. The applicant suggests that the director's adjudication of the application was unfair. The applicant has not demonstrated any error by the director in conducting its review of the application. Nor has the applicant demonstrated any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10

(9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

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 summarily dismissed.

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