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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC 05 130 10864

Office: LOS ANGELES

Date: APR 24 2009

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-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 if your case was remanded for further action, you will be contacted.

John F. Grissom
Acting 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, Fresno. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be 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 (together comprising the I-687 Application). The director denied the application for temporary residence because the applicant was convicted of three misdemeanor offenses with an additional arrest for driving while intoxicated (DUI) whose ultimate disposition remained unexplained in the record. The director, therefore, concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The AAO has reviewed all of the documents in the file in their entirety and we agree with the director's analysis of the evidence. The record before the AAO contains a letter from the California State Department of Justice dated May 3, 2006 that summarizes the applicant's criminal arrests and convictions: (1) a 1996 conviction for *willful discharge of a firearm in a negligent manner* in violation of section 246.3 of the California Penal Code, (2) a 1996 conviction for *illegal entry* in violation of 8 U.S.C. § 1325 that resulted in the applicant's deportation to Mexico on May 31, 1996, and (3) a 1996 conviction for *battery* in violation of section 242 of the California Penal Code. All three are listed as misdemeanor convictions. Other documents in the record confirm the convictions noted above. These documents also reveal that the applicant has an additional conviction for illegal entry into the United States that resulted in a 60 day sentence of incarceration and ultimate deportation to Mexico on January 7, 1998.

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.2(c)(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).

In this case, the applicant has three misdemeanor convictions. Therefore, the applicant has failed to establish by a preponderance of the evidence that he has no disqualifying criminal convictions and is otherwise admissible to the United States, as required under both 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

Additionally, the applicant was twice deported from the United States. As the orders of deportation are outside the statutory period of January 1, 1982 to May 4, 1988, they do not interrupt the applicant's continuous residence. However, an order of deportation could render the applicant inadmissible in the event he does not seek a waiver for this particular ground of inadmissibility. 8 U.S.C. § 1182(a)(9); section 212(a)(9) of the Immigration and Nationality Act.

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