



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

4



FILE: [REDACTED]
MSC-05-239-12520

Office: LOS ANGELES

Date: FEB 17 2009

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

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, Los Angeles. 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. The director determined that the applicant was statutorily ineligible for temporary resident status because of the applicant's May 9, 1996 conviction for violating 21 U.S.C. § 844(a) (possession of narcotics). Thus, the director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant represents himself on appeal. He states that his one misdemeanor conviction does not disqualify him from temporary resident status. He also indicated that he would submit a brief in support of his appeal. To date, no brief or statement has been filed.

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 record presently before the AAO establishes that on March 26, 1996, the applicant was stopped at the Calexico, California port of entry. Discovered inside the vehicle's rear panels were 70.50 pounds of marihuana. On March 27, 1996, the applicant was charged with one count of *attempting to import a controlled substance*, in violation of 21 U.S.C. §§ 952, 960, and 963 (Case No. [REDACTED]). On May 9, 1996, a second indictment was issued charging the applicant with one count of violating 21 U.S.C. § 844, *possession of a controlled substance*. On May 9, 1996, the applicant pleaded guilty to one count of violating 21 U.S.C. § 844, *possession of a*

controlled substance. The applicant was sentenced to a three year term of supervised probation, and ordered to pay a fine of \$1,000 as well as the costs of prosecution. (Docket No. [REDACTED])

At issue in this proceeding is whether the applicant has established that he resided in the United States throughout the statutory period and whether he met his burden of establishing that he is admissible to the United States, that he does not have a disqualifying criminal conviction, and that he is otherwise eligible for temporary resident status pursuant to the settlement agreements.

The AAO has reviewed all of the evidence in the file, including each document in its entirety. We conclude that the applicant is not statutorily eligible to adjust to lawful permanent resident status because of his drug conviction offense. The Immigration and Nationality Act (INA) clearly prohibits applicants with controlled substance violations from adjusting from temporary to permanent resident status. 8 U.S.C. §245A(d)(2)(B)(ii)(II); 8 CFR § 245a.2(c)(3). Under “Grounds That May Not Be Waived” found in section 212(a) of the INA, there is one exception to the general rule of ineligibility regarding drug offenses to the extent that the conviction relates to a single offense of simple possession of 30 grams or less of marihuana. 8 U.S.C. §245A(d)(2)(B)(ii)(II).

The applicant’s drug conviction clearly does not fall within the parameters of this exception, insofar as he pleaded guilty to possession of 70.50 pounds of marihuana. A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not specifically challenged that he was convicted of possessing a large quantity of a controlled substance while attempting to cross the border into the United States. He claims that the misdemeanor designation of the offense absolves him from culpability. The applicant’s claim is erroneous and he is nonetheless statutorily ineligible for the immigration benefits he seeks because of his criminal conviction. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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