

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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

U.S. Citizenship
and Immigration
Services

4

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

JUL 24 2009

MSC 06 017 11146

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.

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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of at least three misdemeanors in the United States.

On appeal the applicant asserts that he only has one misdemeanor conviction of driving under the influence; the remaining offenses are for driving without proof of insurance.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulation provides relevant definition at 8 C.F.R. 245a.2(c)(1).

“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 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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

In response to a Form I-72 dated August 18, 2006, which requested the applicant to submit original or certified court dispositions for all arrests, the applicant provided the following:

1. A court disposition from the Southgate Municipal Court in Los Angeles County, which reflects that on February 5, 1990, the applicant was arrested for driving without a license, a violation of section 12500(a) VC, a misdemeanor, and no proof of car insurance, a violation of section 16028(a) VC, an infraction. On February 27, 1990, the applicant pled guilty to both offenses. [REDACTED]
2. A court disposition from the Compton Municipal Court in Los Angeles County, which reflects that on November 11, 1993, the applicant was arrested for drinking in public, a violation of LMC 3-2, a misdemeanor. On February 8, 1999, the case was dismissed. [REDACTED]

3. A court disposition from the Los Angeles County Superior Court, which reflects that on December 18, 2004, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; driving without a license, a violation of section 12500(a) VC, all misdemeanors; and no proof of car insurance, a violation of section 16028(a) VC, an infraction. On February 16, 2005, the applicant was convicted of driving with .08 percent or more alcohol in the blood and driving without a license. The applicant was placed on probation for three years and ordered to pay a fine.

The record contains a FBI report dated March 20, 2006, which reveals that the applicant was arrested on October 14, 2005, by the Sheriff's Office in Norwalk, California for threatening crime with intent to terrorize and brandishing a firearm. The applicant, however, has not provided the requested court disposition for this arrest.

Declarations by an applicant that he has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for temporary resident status because of his three misdemeanors convictions. 8 C.F.R. § 245a.2(c)(1). In addition, the applicant failed to establish he is admissible due to his failure to provide the court disposition for the arrest on March 20, 2006, necessary for the adjudication of the application. Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

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