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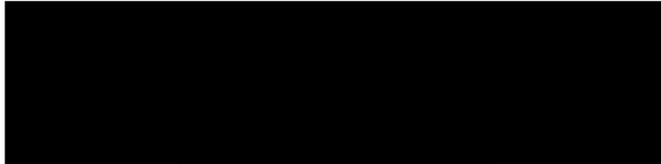
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090



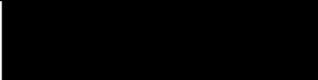
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FILE:



Office: LOS ANGELES

Date: **MAR 01 2010**

MSC 05 220 10134

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 remanded for further action, you will be contacted.

Perry Rhew
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 three misdemeanors in the United States.

On appeal, the applicant asserts that he has only one misdemeanor conviction as his arrests on August 3, 2001, and November 29, 2003, did not result in convictions.

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).

The FBI report reflects that on April 16, 2004, the applicant was arrested by the Westminster Police Department in California for driving under the influence.

The director issued a Form I-72 dated February 28, 2007, which requested the applicant to submit certified court dispositions of his arrests. The applicant, in response, submitted court dispositions, which reflect the following:

1. On August 3, 2001, the applicant was charged with hit and run causing property damage, a violation of section 20002(a) VC, assault, a violation of section 240 PC, and battery, a violation of 242 PC, all misdemeanors. On September 10, 2001, the applicant was convicted of violating section 20002(a) VC. The applicant was ordered to pay a fine and was placed on probation for three years. The remaining charges were dismissed. [REDACTED]
2. On December 9, 2003, the applicant was charged with driving without a license, a violation of section 12500 VC, a misdemeanor. On December 29, 2003, the applicant pled guilty to the charge and was ordered to pay a fine. [REDACTED]

3. On May 14, 2004, the applicant was charged with driving under the influence, a violation of section 23152(a) VC, and driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, both misdemeanors. On May 17, 2004, the applicant pled guilty to both charges. For the charge of driving under the influence, the applicant was ordered to pay a fine and was placed on informal probation for three years. The court stayed sentence for the remaining charge pursuant to section 654 PC.¹

The applicant's assertion that the charges in numbers one and two above were dismissed is not supported by the record. The court dispositions provided by the applicant clearly reflect that the applicant was convicted of each charge.

The applicant is ineligible for temporary resident status because he has been convicted of at least three misdemeanors. 8 C.F.R. § 245a.2(c)(1). 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.

¹According to California Penal Code 654, is an act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.