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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

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FILE:

Office: LOS ANGELES

Date: **JUL 25 2008**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Inadmissibility pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed as moot.

The applicant submitted a Form I-690, Application for Waiver of Grounds of Inadmissibility, to overcome the ground of inadmissibility arising under section 212(a)(9)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(9)(A). In denying the application, the director determined that the applicant neglected to respond to questions #9 and #11 on the Form I-690. Question #9 requests applicants to list the reason(s) of inadmissibility and question #11 requests applicants to list the reason(s) for the grant of the waiver. The director concluded that the applicant had not provided a humanitarian or public interest reason for the grant of the waiver, and denied the application.

On appeal, counsel asserts that there are family unity and humanitarian reasons for granting the waiver. Counsel states that the applicant's spouse and three children are United States citizens. Counsel states that the applicant provides economic support to his family. Counsel states that if the waiver is denied, the applicant will be separated from his family and they will lose his economic and emotional support. Counsel furnishes additional corroborating documentary evidence in support of these assertions.

A review of the record reveals that on June 1, 2005 the applicant filed a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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). The applicant concurrently filed a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to establish his class membership in the CSS/Newman settlement agreements. The record shows that on February 9, 2007, the applicant filed a Form I-690 waiver application in an attempt to overcome the ground of inadmissibility arising under section 212(a)(9)(A)(i) or (ii) of the Act for aliens previously removed. Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), provides in pertinent part:

(i) Arriving Aliens- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible. (ii) Other Aliens - Any alien not described in clause (i) who - (I) has been ordered removed under section 240 or any other provision of law, or (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

Citizenship and Immigration Services (CIS) records show that the applicant has been previously ordered removed.

On August 15, 2007, the director denied the applicant's Class Membership Application, finding the applicant to be ineligible based on his criminal convictions. The CSS/Newman Settlement Agreements define class members as "all persons who were otherwise prima facie eligible for legalization under section 245A of the [Immigration and Nationality Act]." CSS Settlement Agreement paragraph 1 at page 3; Newman Settlement Agreement paragraph 1 at page 3. An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status under section 245A(a)(4)(B) of the Act, 8 U.S.C. § 1255a(a)(4)(B); 8 C.F.R. § 245a.2(c)(1). In his August 15, 2007 decision, the director made four findings pertinent to the instant application. First, the director found that on June 8, 1977 the applicant was convicted of *Illegal Entry into the United States* in violation of section 275(a) of the Act, 8 U.S.C. § 1325(a). The term of imprisonment for a first violation of section 275(a) of the Act is not more than six months. *Id.* According to 8 C.F.R. § 245a.1(o), this conviction is a misdemeanor. Second, the director found that on July 24, 1978, the applicant was again convicted of *Illegal Entry into the United States* in violation of section 275(a) of the Act, 8 U.S.C. § 1325(a). The term of imprisonment for a subsequent violation of section 275(a) of the Act is not more than two years. *Id.* According to 8 C.F.R. § 245a.1(p), this conviction is a felony. Third, the director found that on January 14, 1987, the applicant was convicted of *Driving Under the Influence* in violation of section 23152(a) of the California Vehicle Code. The term of imprisonment for the first violation of section 23152(a) of the California Vehicle Code is not more than six months. Cal. Veh. Code § 23160 (West 1987). According to 8 C.F.R. § 245a.1(o), this conviction is a misdemeanor. Finally, the director found that on July 15, 1992, the applicant testified under oath that he participated in alien smuggling activities rendering him inadmissible pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i). The director concluded that the applicant failed to establish that he met the class membership definition, and denied his Application for Class Membership. The director administratively closed the applicant's Form I-687 application based on his failure to establish class membership. Upon review of the record, we concur with the director's determinations. The record shows that the applicant was convicted of a felony offense and participated in alien smuggling.

Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." The applicant submitted a Form I-690 waiver application in an attempt to overcome the ground of inadmissibility arising under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). However, the director determined, pursuant to 8 C.F.R. § 245a.2(c)(1), the applicant to be ineligible for class membership based on his felony conviction. There is no waiver available for this ground of ineligibility. The applicant neglected to appeal the denial of his class membership to a Special Master appointed under the terms of the CSS/Newman Settlement Agreement. Therefore, the director's denial of the applicant's class membership is final and the applicant is ineligible to file a Form I-687 application under the CSS/Newman Settlement Agreements. Hence, even if the

applicant's Form I-690 application was granted, he has no corresponding approved Form I-687 application upon which he could be granted temporary resident status. Further pursuit of the instant matter is thus moot and the appeal is dismissed.

ORDER: The appeal is dismissed.