

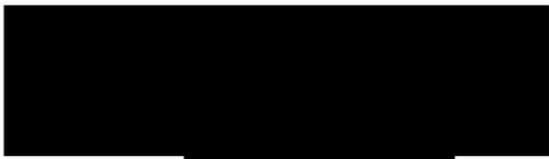
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



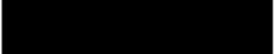
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L1



FILE:



Office: FRESNO

Date:

MSC-06-073-12212

SEP 02 2008

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, 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 District Director, Fresno, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because, on July 19, 1988, the applicant testified under oath that he was arrested on four different occasions. Following the interview, United States Citizenship and Immigration Services (CIS) requested that the applicant submit court documents for each of the four arrests. In response, the applicant submitted evidence of the dispositions of two of the four arrests. On November 20 2006, the director denied the application noting several things.

First, the director noted that the applicant properly filed his Form I-687 application on April 14, 1988 and was therefore, not eligible for class membership under the CSS/Newman Settlement Agreements. The director went on to adjudicate the case on its merits, noting the deficiencies in both the applicant's evidence of entry prior to January 1, 1982 and his continuous residency in the United States during the requisite period. According to the settlement agreements, the director shall issue a Notice of Intent to Deny (NOID) before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

On appeal, the applicant resubmitted documents from McFarland Unified School District which indicate that the applicant was enrolled as a student from September 1978 until June 1982. He also resubmitted a San Joaquin High School identification card and official transcripts which indicate that he was a student from 1982 until 1984. There is an additional notation on the transcript that in 1988, the applicant completed ESL credits in 1988. There is no record of his enrollment for the period of 1984 until 1988. On appeal, the applicant did not provide any additional information or evidence of his eligibility.

Temporary resident status may be terminated if the alien is convicted of a felony, or three or more misdemeanors. See 8 C.F.R. § 245a.2(u)(1)(iii). Also, such status may be terminated if the alien was ineligible for temporary residence. 8 C.F.R. § 245a.(2)(u)(1)(i). Finally, status may be terminated if the alien commits an act which renders him inadmissible as an immigrant. 8 C.F.R. § 245a.2(u)(1)(ii).

"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).

It is noted that the applicant admitted under oath, in his July 19, 1988 interview with CIS that he was arrested on four different occasions. A review of the record indicates that the applicant was arrested on October 19, 1986 for *Possession of a Controlled Substance*; on January 11, 1987 for *Driving While Under the Influence*, and convicted in Case No. [REDACTED] for driving under the influence, a misdemeanor under Section 23152(a) and public intoxication under section 647(f). The drug charge was subsequently dismissed. The applicant was also arrested on March 24, 1988 for *Receive Known Stolen Property*. The application also admitted a fourth arrest for *Driving Under the Influence* in either 1984 or 1985.

Accordingly the applicant submitted evidence of the final disposition relating to two of the four arrests. He admitted that he did not have the records for the two remaining arrests. The applicant's past criminal record is subject to verification by CIS as it related to his eligibility for the benefit sought. Additionally, Section 245A(b)(1)(C) of the Act provides that the alien "*must establish* that he is (i) is admissible...and (2) *has not been convicted* of any felony or 3 or more misdemeanors." Accordingly, since the applicant has testified under oath that he was arrested on four separate occasions, and he has failed to provide evidence regarding two of the four arrests, the applicant has not established that he "has not been convicted" of the offenses in question and the applicant has not met the requirements of 8 C.F.R. § 103.2(b)(2)(i) and (ii). Thus, the applicant has not met his burden of proof and the appeal must be dismissed. See Section 245A(b)(1)(C) of the Act; 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5).

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