

PUBLIC COPY

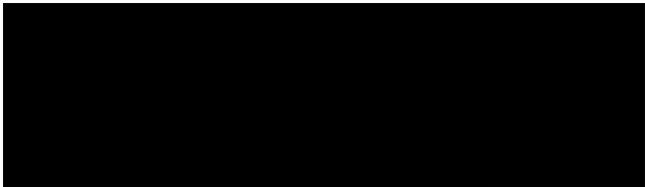
AS ...
prevent ...
invasion of ...



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

U.S. Citizenship
and Immigration
Services

LI



APR 27 2009

FILE: [REDACTED]
MSC 07 136 11176

Office: NATIONAL BENEFITS CENTER

Date:

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.

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, National Benefits Center. 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 (together comprising the I-687 Application). The director denied the application for temporary residence because a check of the applicant's fingerprints revealed arrests in California in 1980, 1983, 1984, and 1987 on criminal charges including *burglary, possession of armor penetrating ammunition, and driving while intoxicated*. The director, therefore, concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant represents himself on appeal. The Notice of Appeal (Form I-694) does not identify any reason for the appeal or error in the decision of the director. However, attached to the Form I-694 are a series of affidavits from family members and friends, a medical examination letter, and a letter from the applicant's pastor. The applicant did not submit any evidence to explain the criminal charges noted above.

The AAO has reviewed all of the documents in the file in their entirety and we conclude that the applicant is not eligible for temporary residence because of his criminal history. The record before the AAO contains a photocopy of the applicant's arraignment before the Municipal Court of Los Angeles, Central Arraignment [REDACTED] dated April 21, 1994. The arraignment record reveals that the applicant was arrested on or about October 13, 1987 and charged with one count of violating section 12320 of the California Penal Code – *possession of armor piercing ammunition*. On April 25, 1991, the charge was dismissed pursuant to the applicant's motion to dismiss for a violation of the right to a speedy trial. Therefore, this criminal charge does not affect the applicant's eligibility for temporary resident status.

The record also contains photocopies of several minute orders issued by the Superior Court of California, County of Los Angeles. These documents indicate that the applicant's convictions for *burglary* and *driving while intoxicated* ([REDACTED] and [REDACTED]) were ultimately dismissed on February 13, 2007, subsequent to the successful completion of the terms of probation and pursuant to section 1203.4 of the California Penal Code. No other documents are submitted to indicate whether the applicant was sentenced to a term of imprisonment.

The AAO notes that burglary is a felony offense under California law. 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).

In this case, there is no evidence in the record to suggest that the applicant's felony burglary conviction was defined by the trial court as a misdemeanor. Additionally, the Ninth Circuit Court of Appeals, the jurisdiction in which this case arises, has deferred to the Board of Immigration Appeals' (BIA) determination regarding the effect of post-conviction expungements pursuant to a state rehabilitative statute.¹ Section 1203.4 of the California Penal Code is a state rehabilitative statute. The provisions of section 1203.4 allow a criminal defendant to withdraw a plea of guilty or *nolo contendere* and enter a plea of not guilty subsequent to a successful completion of some form of rehabilitation or probation. It does not function to expunge a criminal conviction because of a procedural or constitutional defect in the underlying proceedings. In this case, there is no evidence in the record to suggest that either of the applicant's convictions for *burglary* or *driving while intoxicated* were expunged because of an underlying procedural defect in the merits of the case, and the vacated burglary conviction remains valid for immigration purposes.

Additionally, the applicant does not identify any errors in the decision of the director. Federal regulatory provisions governing an appeal from a legalization decision by the district director state, in pertinent part, that an appeal which is filed that fails to state the reason for appeal or is patently frivolous will be summarily dismissed. *See* 8 C.F.R. § 103.3(a)(3)(iv). (2007). The applicant's appeal is also subject to summary dismissal.

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 addressed the basis for denial and he is nonetheless statutorily ineligible for the immigration benefits because of his felony burglary conviction.

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

¹ *See Murillo-Espinoza v. INS*, 261 F.3d 771, 774 (9th Cir. 2001) (expunged theft conviction still qualified as an aggravated felony); *Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9th Cir. 2002) (expunged misdemeanor California conviction for carrying a concealed weapon did not eliminate the immigration consequences of the conviction); *see also de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1024 (9th Cir. 2007); *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1067 (9th Cir. 2003) (expunged conviction for lewdness with a child qualified as an aggravated felony).