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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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: HOUSTON Date: AUG 0 3 2009
MSC 06 097 11455

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:

[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.

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, Houston, Texas 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, counsel asserts that the misdemeanor convictions do not constitute crimes involving moral turpitude as driving with a suspended license is an administrative offense and should not count as a conviction for legalization.

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 record contains court documentation from the Harris County District Clerk in Houston, Texas, which reveals the applicant's criminal history as follows:

1. On April 9, 1983, the applicant was charged with driving while intoxicated. On April 13, 1983, the applicant pled *nolo contendere* to the misdemeanor offense and was ordered to serve 15 days in jail and pay a fine. [redacted]

2. On October 17, 1987, the applicant was arrested and subsequently charged with driving while intoxicated, 1st degree. On January 24, 1994, the charge was dismissed. [redacted]

3. On October 26, 1988, the applicant was arrested and subsequently charged with driving while intoxicated, 1st degree. On December 14, 1994, the applicant was convicted of this misdemeanor offense, ordered to serve four days in jail and pay a fine. [redacted]

4. On December 9, 1994, the applicant was arrested and subsequently charged with driving while license is suspended. On December 16, 1994, the applicant was

convicted of this misdemeanor offense, ordered to serve 15 days in jail and pay a fine.

Counsel, on appeal, asserts that the applicant's conviction in number four above is an administrative offense and should not be counted as a conviction for immigration purposes. Counsel's assertion, however, has no merit as, the applicant was convicted of an offense which the court documents describe as a Class B Misdemeanor. Texas law (§ 12.22) describes the punishment for a Class B Misdemeanor as confinement in jail for a term not to exceed 180 days and/or a fine not to exceed $2,000.

As noted above, a misdemeanor is defined as a crime committed in the United States punishable by imprisonment for a term of one year or less, regardless of the term actually served. As the applicant received a punishment of 15 days in the county jail, the applicant has been convicted of a misdemeanor for immigration purposes.

The FBI report dated October 13, 2006, reflects that on September 28, 1986, the applicant was arrested by the Polk County Police Department in Cedartown, Georgia for driving under the influence and driving without a license. The applicant was subsequently convicted of both offenses and turned over to the Sheriff's Office in Polk County.

Counsel submitted a handwritten statement from a chief deputy clerk in Polk County, indicating that no record was found from 1986 through the first quarter in 1988 in Polk County Superior Court. However, as the statement was not certified by the court, it has no probative value in this proceeding.

The applicant is ineligible for temporary resident status because of his three misdemeanor convictions. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of 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.