U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: SAN DIEGO Date: AUG 12 2009

MSC 06 097 11014

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 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, San Diego. 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 the applicant was convicted of three DUI misdemeanor offenses in the state of California. The director 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 is represented by counsel on appeal. Counsel argues that two of the three DUI convictions are not misdemeanor offenses because the applicant was not sentenced to a term of imprisonment. Counsel maintains that the applicant remains eligible for temporary resident status.

The AAO has reviewed all of the documents in the file in their entirety and we agree with the director's analysis of the evidence. Following the submission of the application for temporary residence (Form I-687), the applicant was notified on October 18, 2007 (Request for Evidence, Form I-72) to submit court dispositions for all criminal arrests in the United States. The applicant submitted court documents that reveal two misdemeanor convictions in the state of California:

(1) a March 14, 2006 conviction for one count of violating section 23152(a) of the California Vehicle Code – *Driving Under the Influence* (and
(2) a January 3, 2005 conviction for one count of violating section 23152(a) of the California Vehicle Code – *Driving Under the Influence* (.

The record also contains FBI documents which list a series of additional arrests for DUI, driving with a suspended license, and contempt of a court order in 2004, 2006, 2007, and 2008. The record contains no certified court documents indicating a final disposition for these charges.

In addition to the criminal arrests cited above, the FBI documents reveal an additional conviction on February 24, 2009, for one count of violating section 23550 of the California Vehicle Code - *Driving Under the Influence With Priors.* The applicant was sentenced to 16 months incarceration for this offense. The AAO notes further that the applicant was ordered deported from the United States by an immigration judge on June 2, 1995.

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.2(c)(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).

"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).

In this case, the evidence of record establishes that the applicant has at least three misdemeanor convictions. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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