



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-06-102-11405

Office: LOS ANGELES

Date: DEC 02 2009

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. 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.

Perry Rhew  
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, Los Angeles. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

Additionally, the director noted that the applicant was also ineligible for temporary resident status because of his three California state misdemeanor convictions that remained valid for immigration purposes despite the dismissal of one of the convictions under California's rehabilitative statute, section 1203.4 of the California Penal Code. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, 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 applicant does not specifically address the director's analysis of the evidence, nor does he identify any error in the final decision of the district 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).

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. The appeal must therefore be summarily dismissed.

Alternatively, the applicant's criminal convictions render him ineligible for temporary resident status. For purposes of qualifying for certain immigration benefits, 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).

"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).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record contains court documents that establish the applicant's criminal convictions. The applicant was convicted on December 3, 1999, for one count of violating section 12500(a) of the California Vehicle Code – unlicensed driver. [REDACTED] The applicant was also convicted on February 24, 1992 for one count of violating section 23152(b) of the California Vehicle Code – in excess of .08% blood alcohol. [REDACTED]. The applicant was convicted on October 27, 1989, for one count of violating section 12500(a) of the California Vehicle Code – unlicensed driver. [REDACTED]

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. State rehabilitative actions that do not vacate a conviction on the merits as a result of underlying procedural or constitutional defects are of no effect in determining whether an alien is considered convicted for immigration purposes. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). In this case, any remedial action taken by the California court pursuant to section 1203.4 of the California Penal Code was a state rehabilitative action that does not vacate the conviction for immigration purposes.

The applicant stands convicted of three misdemeanor offenses. He is therefore ineligible for adjustment to temporary resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available. The decision of the director is affirmed.

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