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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 04 357 10361

Office: NEW YORK

Date: JAN 06 2009

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:

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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant must establish entry into the United States before January 1, 1982, and continuous residence in the United States since such date through the date the application is considered filed pursuant to the CSS/Newman Settlement Agreements. Section 245A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(a)(2).

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on September 21, 2004. In her Notice of Intent to Deny dated January 27, 2006, the director noted that on August 3, 2005, the applicant was interviewed in connection with his Form I-687. The director stated that at the time of his interview, the applicant stated that he first entered the United States from Haiti without inspection via a small vessel in February 1985. The director denied the application after determining 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.

On appeal, counsel asserts that the applicant has submitted affidavits from credible witnesses pertaining to his illegal presence in the United States. Counsel further asserts that the applicant's credible testimony coupled with affidavits from credible witnesses is sufficient to establish his continuous unlawful presence in the United States during the requisite periods. Counsel does not submit any new evidence on appeal.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. A review of the director's decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented any evidence to overcome the director's denial. Nor has he specifically addressed the basis for denial. The appeal must therefore be summarily dismissed.

An alien who has been convicted of three or more misdemeanors or a felony in the United States is ineligible to adjust to temporary resident status. 8 C.F.R. § 245a.3(c)(1). The regulations at 8 C.F.R. § 245a.1(o) and (p) define "misdemeanor" and "felony" as:

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 the term "felony" of this section.

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.

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 section 245a of the Act, the crime shall be treated as a misdemeanor.

The record reflects the following offenses:

- (1) On February 5, 1996, the applicant was convicted by a Judge of the Criminal Court of the City of New York, County of Kings of the State of New York of disorderly conduct, PL 240.20, a misdemeanor. (Docket Number [REDACTED])
- (2) The applicant's Federal Bureau of Investigation fingerprint results report shows that on October 4, 1989, the applicant was arrested by the New York Police Department for reckless endangerment, possessing a forged instrument and the operation of a motor vehicle by an unlicensed driver.

The final court dispositions for the three arrests listed in Item #2 above have not been provided for the record by the applicant.

Beyond the decision of the director, the AAO observes that the applicant is inadmissible as an alien who is afflicted with a dangerous contagious disease because he was infected with the HIV virus. He was informed that he could submit a Form I-690, Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act; however, the record does not show that he did so. The application shall not be approved for this additional reason.

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