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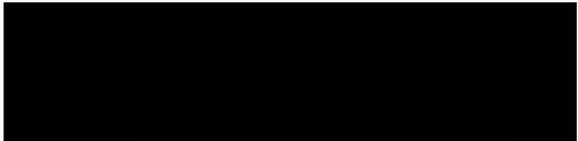
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



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FILE:   
MSC 05 176 10552

Office: HOUSTON

Date: **JUL 30 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:



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, Houston. 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 misdemeanor offenses. Consequently, 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.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period, that he has no disqualifying criminal convictions and is thus otherwise admissible to the United States. Here, the applicant has failed to meet this burden because of his multiple misdemeanor convictions.

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.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). 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 AAO has reviewed all of the documents in the file in their entirety and we agree with the director's analysis of the evidence. The record before the AAO contains a letter from the Clerk & Comptroller's Office for Palm Beach County, Florida, dated December 13, 2007, with a photocopy of microfiche records, FBI fingerprint analysis records, and a photocopy of a minute order issued by the County Criminal Court No. 3 of Harris County, Texas, from the October term, 1993. The AAO will discuss each item separately.

The microfiche records indicate that the applicant pleaded *nolo contendere* to one count of violating section 810.08 of the Florida Consolidated Statutes – *Trespass in a Structure or Conveyance*, on or about October 3, 1978, and was sentenced to nine months probation. The document identifies a case number as: [REDACTED]

Additionally, in the "comments section" of the above document, it appears that the applicant violated the terms of probation, pleaded *nolo contendere* to a second unspecified criminal offense, for which the applicant's term of probation was extended by three months on or about May 8, 1979. Finally, the "comments section" states that this sentence was "to run concurrent with case no. [REDACTED]"

Based on the microfiche records, the AAO concludes that the applicant has two misdemeanor convictions under two different docket numbers as described above.

The FBI fingerprint analysis records also indicate that the applicant was charged with two separate criminal violations of the Florida Consolidated Statutes: section 810.08 noted above, and section 843.02 – *Resisting an Arresting Officer Without Violence*. The AAO has also reviewed the Florida statutes in question and we note that, with certain limited exceptions that do not appear to be applicable here, section 810.08 is generally charged as a second degree misdemeanor and the violation of section 843.02 is clearly identified as a misdemeanor in the record. The record does not contain the court disposition of the charge under section 843.02.

Next, the record contains a photocopy of a minute order issued by the County Criminal Court No. 3 of Harris County, Texas, from the October term, 1993. This document reveals that the applicant pleaded *nolo contendere* to “theft as charged in the information” on or about November 5, 1993. The proceedings are identified as [REDACTED]. The court designated this offense as a misdemeanor.

Additionally, the record indicates that the applicant was twice placed in deportation proceedings for unlawful entry in 1969 and for overstaying a B-2 visitor’s visa in 1972. The applicant failed to voluntarily depart the United States despite having been twice granted the privilege of voluntary departure. As the deportation proceedings are outside the statutory period of January 1, 1982 to May 4, 1988, they do not interrupt the applicant’s continuous residence. However, an order of deportation could render the applicant inadmissible in the event he does not seek a waiver for this particular ground of inadmissibility. 8 U.S.C. § 1182(a)(9); section 212(a)(9) of the Immigration and Nationality Act.

In this case, the applicant has three misdemeanor convictions. Therefore, the applicant has failed to establish by a preponderance of the evidence that he has no disqualifying criminal convictions and is otherwise admissible to the United States, as required under both 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. 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.