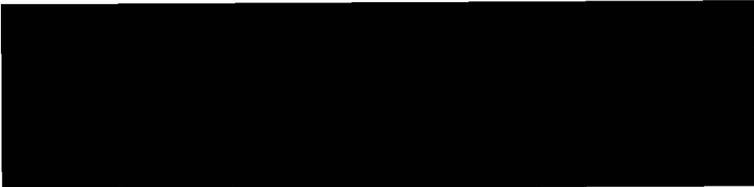


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PUBLIC COMMENT

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services



41

FILE:



Office: LOS ANGELES

Date:

06 2009

MSC 06 060 10873

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to act on behalf of the applicant, [REDACTED] is not recognized as an authorized or accredited representative pursuant to 8 C.F.R. § 292.1(a).¹ Accordingly, the decision will be furnished only to the applicant.

The director denied the application because he determined that the applicant had been convicted of a felony and three misdemeanors in the United States.

On appeal, the applicant asserts that he has previously submitted documents from the courts indicating that there are no criminal cases in his name.

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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

¹ See <http://www.usdoj.gov/eoir/statspub/raroster.htm> for the list of accredited organizations and representatives.

At the time the applicant filed his initial Form I-687 application in April 1990, the applicant provided a court disposition from the Orange County Superior Court in California. The court disposition revealed that on September 19, 1988, the applicant pled guilty to violating section 10851 VC, unlawful taking of a vehicle, and section 496.1 PC, receiving stolen property, sections 23153(a) and (b) VC, injury caused while driving under the influence and injury caused while driving with .10 percent or more alcohol in the blood. The applicant was sentenced to 16 months in prison for violating sections 10851 VC and 23153(a) VC, both felonies. The sentence was stayed for violating sections 496.1 PC and 23153(b) VC and the applicant was given probation. Proceedings were terminated for violating sections 2800.1 VC, evading a police officer, and section 23104 VC, reckless driving, both misdemeanors. Case no. [REDACTED]

The FBI report, via a fingerprint analysis, revealed the following offenses in the state of California:

1. On September 11, 1978, the applicant was arrested by the Sheriff's Office in Bakersfield for violating section 496 PC, receiving known stolen property.
2. On November 23, 1986, the applicant was arrested by the Sheriff's Office in Norwalk for violating 11350(a) H&S, unlawful possession of a controlled substance. The applicant was placed on a diversion which was subsequently dismissed pursuant to 1000 PC.
3. On March 26, 1988, the applicant was arrested under the alias [REDACTED] by the Anaheim Police Department for violating section 10851 VC, unlawful taking of a vehicle, section 496.1 PC, receiving stolen property and section 487(h) PC, grand theft auto. This arrest relates to the court disposition from the Orange County Superior Court in California noted above.
4. On March 29, 1988, the applicant was arrested under warrant under the alias [REDACTED] by the Sheriff's Office in Santa Ana for taking a vehicle without owner's consent. The applicant was also arrested for violating section 496.1 PC, receiving stolen property, and sections 23153(a) and (b) VC, injury caused while driving under the influence and injury caused while driving with .10 percent or more alcohol in the blood. This arrest relates to the court disposition from the Orange County Superior Court in California noted above.
5. On February 8, 1994, the applicant was detained under the alias [REDACTED] by the Los Angeles Police Department for petty theft with a prior, a violation of section 666 PC. No charges were filed due to lack of corpus.

On May 17, 2006, the applicant was issued a Form I-72, advising him of his arrests outlined in the FBI report. The applicant was requested to submit the charging documents and court dispositions for all arrests. The applicant, in response, submitted:

- A letter dated June 5, 2006, from a representative of the Los Angeles County Superior Court, indicating that a criminal search of the applicant's name and aliases were conducted and criminal case number [REDACTED] was found. The case number relates to three misdemeanor offenses; sections 71.02(b), 71.03(c) and 71.16.1. The letter indicated that to obtain copies of the court's files, contact with the criminal justice center was required.

A letter dated June 13, 2006, from a representative of the Los Angeles County Superior Court, indicating that a thorough search of its record from 1979 to the present revealed no case number or record for [REDACTED]

- A document dated June 1, 2006 from a representative Kern County Superior Court, indicating a check of the court records from September 1, 1978 to June 1, 2006 found no criminal action filed against the applicant.
- A letter dated June 5, 2006, from a representative of the Orange County Superior Court, indicating a criminal record search for the period January 1, 1980 to June 4, 2006 was conducted and no criminal record was found under the name [REDACTED]. The letter stated that the case the applicant was requesting was no longer maintained by the court pursuant to Government Code section 68152(d). The letter also stated that for information on records that have been destroyed, the applicant may contact the California Department of Justice Bureau of Criminal Identification.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by U.S. Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. The applicant has the burden to establish with *affirmative evidence* that the offenses were either dismissed or were in error. The applicant was instructed to contact the California Department of Justice Bureau of Criminal Identification in order to obtain records that had been destroyed. The record, however, contains no documentation from this entity.

It is concluded the applicant has failed to provide all the court dispositions necessary for the adjudication of his application.

The applicant is ineligible for temporary resident status because of his two felony convictions. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. The applicant is also ineligible for the benefit being sought as he has failed to provide the requested court dispositions necessary for the adjudication of the application in numbers one, two and five above.

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.