

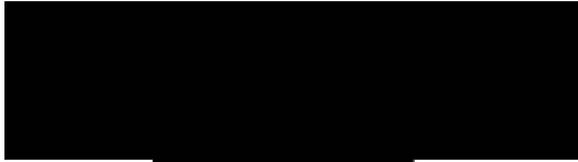


U.S. Citizenship
and Immigration
Services

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FILE:



Office: BOSTON

Date:

MAY 14 2009

MSC-06-101-25658

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, or *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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found the applicant ineligible for temporary resident status due to his conviction of possession of narcotics, a felony, in violation of California Health and Safety Code Section 11350(a).

On appeal, the applicant does not address the conviction but states that he is eligible for temporary resident status pursuant to Section 245A of the Immigration and Nationality Act (Act).

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not provided any explanation to address his felony conviction.¹ The appeal must therefore be summarily dismissed.

Beyond the decision of the director, the applicant is ineligible for the benefit sought since he has not presented any credible evidence to support his claim of continuous residence in the United States for the duration of the requisite period. The application may not be approved for this additional reason.

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

¹ The record of evidence shows that the applicant pled guilty to and was convicted of possession of narcotics in violation of Section 11350(a) of the California Health and Safety Code in the Superior Court of Central District, Los Angeles County, on June 22, 1998. Further, the applicant was sentenced to 36 months of drug counseling and supervision by a probation officer [REDACTED]. The guilty plea was set aside on January 11, 1999 as the applicant successfully completed the drug counseling program. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). 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. *Matter of Roldan, id.* In this case, there is no evidence in the record to suggest that the applicant's felony conviction was dismissed as a result of any procedural or constitutional error committed during the trial court proceedings. Thus, the applicant's felony conviction remains valid for immigration purposes and disqualifies him for temporary residence under the terms of the settlement agreements.