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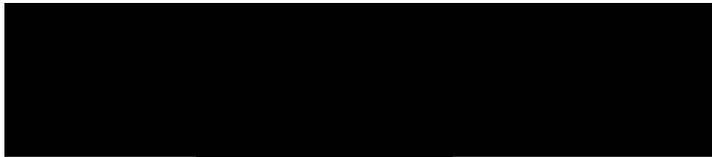
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

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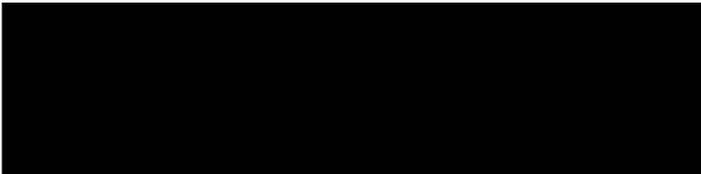
Office: LOS ANGELES

Date: **MAY 14 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 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, 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 (together comprising the I-687 Application). The director denied the application for temporary residence because the applicant was convicted of four misdemeanor offenses in the state of California. 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.

The applicant is represented by counsel on appeal. Counsel filed a Notice of Appeal (Form I-694) on May 9, 2007 requesting an extension of time to secure an expungement of the convictions. Counsel also explained that the applicant's January 27, 2004 conviction for driving with a suspended license occurred because the applicant "was unable to claim his driver license because he did not have a valid work permit." No additional evidence has been filed by the applicant following the submission of the Notice of Appeal.

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. Following the submission of the application for temporary residence (Form I-687), the applicant was notified on November 6, 2006 (Request for Evidence, Form I-72) to submit court dispositions for all criminal arrests in the United States. The applicant submitted court documents that reveal four misdemeanor convictions in the state of California:

- (1) a January 4, 1994 conviction for one count of violating section 23103 of the California Vehicle Code – *Reckless Driving without Injury* [REDACTED];
- (2) a January 13, 1994 conviction for one count of violating section 23152(B) of the California Vehicle Code – *Driving a Vehicle with .08% or More Alcohol* [REDACTED];
- (3) a January 7, 2003 conviction for one count of violating section 14601.2(A) of the California Vehicle Code – *Driving with Suspended License* [REDACTED]; and
- (4) a January 27, 2004 conviction for one count of violating section 14601.2(A) of the California Vehicle Code - *Driving with Suspended License* ([REDACTED])

In all cases, the applicant was sentenced to a jail term between two and ten days, placed on probation for three years, and ordered to pay a number of monetary fines.

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).

In this case, the applicant has four misdemeanor convictions. 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.

On appeal, counsel asserts that the applicant is attempting to have the convictions dismissed. 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.¹ 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 misdemeanor convictions were dismissed as a result of any procedural or constitutional error committed during the trial court proceedings. Thus, the applicant's misdemeanor convictions remain valid for immigration purposes and serve to disqualify him for temporary residence under the terms of the settlement agreements. Furthermore, counsel's argument that inasmuch as the applicant's convictions occurred outside of the requisite residency period between January 1, 1982 and May 4, 1988 and therefore are not disqualifying convictions is without merit. The pertinent regulations regarding an approval of temporary residence do not limit disqualifying convictions

¹ See *Murillo-Espinoza v. INS*, 261 F.3d 771, 774 (9th Cir. 2001) (expunged theft conviction still qualified as an aggravated felony); *Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9th Cir. 2002) (expunged misdemeanor California conviction for carrying a concealed weapon did not eliminate the immigration consequences of the conviction); see also *de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1024 (9th Cir. 2007); *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1067 (9th Cir. 2003) (expunged conviction for lewdness with a child qualified as an aggravated felony).

to the residency period. A felony conviction or three misdemeanor convictions at any time will serve to disqualify an applicant for temporary residence.

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