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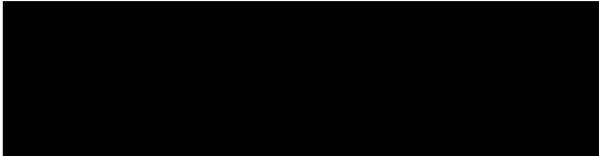
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090

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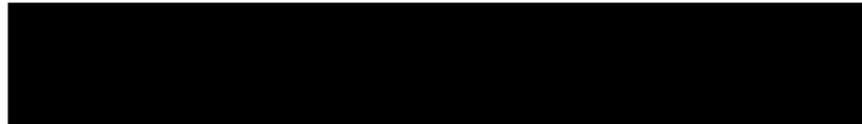


FILE: [REDACTED]
MSC 05 355 12740

Office: LOS ANGELES

Date: **MAY 18 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 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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of four misdemeanors in the United States.

On appeal, counsel asserts that the applicant has only been convicted of two misdemeanors and, therefore, the applicant's application for temporary resident status should be granted.

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 provide 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).

The record contains court documentation which reflects the applicant's criminal history in the state of California:

1. On November 26, 1991, the applicant was arrested and subsequently charged with failure to appear, a violation of section 40508(a) VC, a misdemeanor. The applicant was subsequently convicted of this charge. Docket no. 60269.
2. On August 10, 1997, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC. On January 9, 1998, the applicant was convicted of a lesser charge of reckless driving, a violation of section 23103 VC, a misdemeanor. Docket no. HPDN76764.
3. On July 26, 1998 the applicant was arrested by the Barstow Police Department for two counts of battery on spouse/cohabitant, a violation of section 243(e)(1) PC. On February 19, 1999, the applicant was convicted of one count of battery on spouse/cohabitant, a misdemeanor. The applicant was ordered to serve 30 days in jail and placed on probation for three years. Docket no. P93225.

4. On October 23, 1998, the applicant was arrested and subsequently charged with driving when license is suspended or revoked for other reasons, a violation of section 14601.1(a) VC, a misdemeanor. The applicant was subsequently convicted of this offense. Docket no. P93973.

The FBI report dated June 10, 2003, reflects that the applicant was arrested under warrant on May 21, 1999, by the Barstow Police Department for battery on person.

On March 23, 2006, the director issued a Notice of Intent to Deny, which advised the applicant to submit the court disposition for his arrest on May 21, 1999. The applicant, in response, submitted court documentation dated April 18, 2006, from the San Bernardino County Superior Court, indicating that a search had been conducted and no information was found for a charge of 242 PC on May 21, 1999. The applicant, also submitted a letter dated April 5, 2006, from the Sheriff's Department in Barstow, California, which indicates that the applicant was released on May 22, 1999, for violating section 243(e)(1) PC.

As the applicant was still serving his sentence in the San Bernardino County jail on May 21, 1999, it is concluded that the offense mentioned in the FBI report and number three above are one and the same.

On appeal, the applicant claims that he has only two misdemeanor convictions. The applicant's claim, however, is not supported by the record. In response to a notice dated June 18, 2003, which requested the applicant to submit the final court certified dispositions for all arrests, the applicant submitted the court disposition for number two above. Likewise, in response to the Notice of Intent to Deny, the applicant provided court documentation dated April 13, 2006, from the San Bernardino County Superior Court, which revealed the conviction in number one above.

The applicant is ineligible for temporary resident status because of his four misdemeanor 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.

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.