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



**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-06-098-20486

Office: LOS ANGELES

Date:

OCT 05 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:

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. 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.

Perry Rhew
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 director denied the application because he found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director noted that the applicant has been convicted of five misdemeanors making him ineligible for temporary resident status. Specifically, the applicant was convicted of the following:

- December 19, 1994, in Municipal Court of East Los Angeles of Section 12500(A) Vehicle Code-Misdemeanor for *Unlicensed Driver*.
- June 6, 1996, in Municipal Court of Metropolitan Courthouse Judicial District of Section 23109(c) Vehicle Code-Misdemeanor for *Exhibition of Speed/Engaging Aid/Aid Abetting*.
- July 17, 1997, in Municipal Court of East Los Angeles of Section 14601.1(A) Vehicle Code-Misdemeanor for *Driving with Suspended License*.
- September 12, 2000, in Superior Court of California, County of Los Angeles of Section 23152(B) Vehicle Code-Misdemeanor for *.08% More Weight Alcohol Drive Vehicle*.
- June 27, 2006, in Superior Court of California, County of Los Angeles of Section 12500(A) Vehicle Code-Misdemeanor for *Unlicensed Driver*.

The director noted that an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

“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. 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).

As the applicant has been convicted of five misdemeanors, he is ineligible for adjustment to temporary resident status. On appeal, the applicant has not disputed the fact of his convictions and states only that he is a hard worker who is eligible for temporary resident status.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

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 presented additional evidence. Nor has he addressed the grounds stated for denial. The appeal must therefore be summarily dismissed.

Furthermore, the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Following *de novo* review, the AAO notes that on August 7, 2005, the applicant was served with an I-860 Notice and Order of Expedited Removal, and removed from the United States for attempting to enter the United States by concealing himself in the trunk of a vehicle. He is inadmissible pursuant to 212(a)(7)(a)(I)(i) of the Act.

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