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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

[REDACTED]
XPW 90 248 0584

Office: SAN FRANCISCO

Date: OCT 20 2009

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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. 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, 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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, San Francisco, 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 three or more misdemeanors.

On appeal, counsel states that the applicant was admitted to the United States as a legal permanent resident (LPR) on September 28, 2004, and that the director was without authority to deny his adjustment to permanent resident status. Counsel does not contest the convictions. Counsel states that the applicant was adjusted to LPR status prior to his conviction of two or more misdemeanors. Counsel states that the director's 17-year delay in adjudicating the Form I-698 application for adjustment from temporary to permanent residence constitutes an unlawful retroactive application of law to settled expectations, and that United States Citizenship & Immigration Services (USCIS) is barred by laches and estoppel from rendering a decision on the Form I-698 application.

USCIS records indicate that the Form I-687 application for temporary residence was approved on May 3, 1998. The applicant timely filed the Form I-698 application to adjust from temporary to permanent residence on September 19, 1990. The director denied the application on August 29, 2007.

The applicant submitted a copy of an admission stamp dated September 28, 2004 from San Francisco inspection officials. The stamp indicates class of admission as "LPR, I-546 complete."¹ The stamp does not contain the applicant's alien number, name or other identifying information. The record does not establish that the applicant applied for or received LPR status from USCIS. As such, the director in the instant matter had the authority to deny the applicant's Form I-698 application for adjustment from temporary to permanent resident status.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(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). 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).

¹ Form I-546 is a United States Customs & Border Protection (CBP) notice to appear for deferred inspection.

The record reveals that the applicant has the following criminal history:

1. On November 27, 1990, the application was convicted of violating California Vehicle Code § 12500(a), a misdemeanor, *driving without a license* ([REDACTED]).
2. On June 18, 1992 the applicant was convicted of violating California Vehicle Code § 14601.1(a), a misdemeanor, *driving with a suspended license* [REDACTED].
3. On April 28, 1994 the applicant was convicted of violating California Vehicle Code § 12500(a), a misdemeanor, *driving without a license*. He subsequently admitted to violating probation, and his probation was extended for 18 months [REDACTED].
4. On August 28, 1995 the applicant was convicted of violating California Vehicle Code § 23152(b), a misdemeanor. *Driving With a Blood Alcohol Content of 0.08% or Greater* [REDACTED].
5. On January 3, 2002 the applicant was arrested by the Santa Rosa Police Department and charged with violating California Penal Code § 261.5(c), *Sex with minor 3 or more years younger*. The felony charge was dismissed on September 15, 2004 [REDACTED].

The applicant stands convicted of four or more misdemeanors. 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.

The applicant states that USCIS is barred by estoppel and laches from adjudicating the Form I-698 application after a delay of 17 years. The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel or laches so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See generally, Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel and laches are equitable forms of relief available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See DHS Delegation Number 0150.1* (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel and laches claims.

On appeal, the applicant states that had the director adjudicated the Form I-698 in a timely manner, before he accumulated four or more convictions, that his LPR status would have been approved.² This argument is without merit. The record does not explain the reason for the delayed adjudication. Nevertheless, at the time of the adjudication, the applicant had been

² The applicant had been convicted of 3 misdemeanors by April, 1994.

convicted of four or more misdemeanors. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1).

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