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

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FILE:

MSC 05 235 13180

Office: LOS ANGELES

Date:

SEP 03 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 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 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 finding that the applicant had not submitted sufficient credible evidence to establish entry and continuous residence for the requisite period. 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 AAO reviewed all of the evidence in the file and determined that the applicant had overcome the grounds for denial specified in the director's decision dated June 6, 2007. However, the AAO noted that the record contained evidence of criminal arrests and convictions that had not been addressed by the director. The AAO issued a Request for Evidence (RFE) dated July 9, 2009. The RFE directed the applicant to submit court documents to explain these criminal charges and to provide evidence of a final disposition. The applicant filed a response on August 3, 2009. The AAO has reviewed the court documents submitted by the applicant in response to the RFE. The appeal will be dismissed.

The court documents submitted by the applicant provide a final disposition for the following criminal offenses:

- 1) A conviction on August 11, 1999, for one count of violating section 484(A) of the California Penal Code – *theft of personal property*. The applicant was sentenced to one day in jail and 24 months probation. This offense is listed as a misdemeanor.
- 2) A conviction on October 4, 1999, for one count of violating section 459 of the California Penal Code – *burglary*. This offense was originally charged as a felony, but later reclassified by the trial court as a misdemeanor violation. The applicant was sentenced to serve 28 days in jail and 36 months probation.
- 3) A conviction on September 24, 1997 for one count of violating section 484(A) of the California Penal Code – *theft of personal property*. The applicant was sentenced to 7 days in jail and 24 months probation. This offense is listed as a misdemeanor.

The criminal convictions listed above disqualify the applicant for temporary resident status. 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 temporary 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). 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 term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act, 8 U.S.C. § 1101(a)(48)(A).

In this case, the evidence of record establishes that the applicant has three misdemeanor convictions. She 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.

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