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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



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 06 076 14242

OFFICE: LOS ANGELES

DATE: SEP 09 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:

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 if your case was remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** On December 15, 2005, the applicant filed an 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, or *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). On April 10, 2007, the director, Los Angeles, denied the application because she concluded that the applicant had not submitted sufficient credible evidence to establish eligibility. The Administrative Appeals Office (AAO) reviewed all of the evidence in the file, and issued a **Request for Additional Evidence (RFE)** to the applicant on June 4, 2009. The applicant submitted a response on July 29, 2009, and the appeal is now properly before the AAO. The appeal will be dismissed.

In the RFE, the AAO requested that the applicant submit certified conviction documents to explain the final disposition for the three arrests listed below:

- 1) An arrest by the San Fernando Police Department on or about May 4, 1990 for two counts of violating section 11352A of the California Health and Safety Code – *transport or sell a controlled substance* and for one count of violating section 11351 of the California Health and Safety Code – *possession with intent to sell a controlled substance*. Both of these offenses are listed as felony offenses in California.
- 2) An arrest by the Los Angeles Police Department on or about October 8, 1993 for one count of violating section 470 of the California Penal Code – *forgery*, for one count of violating section 475 of the California Penal Code – *possession of forged notes*, and for one count of violating section 485 of the California Penal Code – *appropriating lost property*. Forgery is considered a felony offense in California. Criminal records in the file indicate that you were convicted on a felony charge of forgery.
- 3) An arrest by the Los Angeles Police Department on or about August 20, 1998 for one count of violating section 273A of the California Penal Code – *inflicting corporal injury on a spouse or cohabitant*.

As regards the arrest listed in item No. 1 above, the applicant explains in his response dated July 29, 2009 that he was “detained arrested (sic) and detained by the San Fernando Police Department, “ and that the arrest record does not exist “because I was released and not charged.” Other than the applicant’s own assertions, the AAO has no independent, credible evidence that the applicant was not convicted for a drug trafficking offense. The explanation provided by the applicant is not sufficient to meet his burden of proof as outlined in the RFE. Therefore, the AAO concludes that this arrest remains unresolved.

The arrest listed in Item No. 2 above involves felony forgery. The applicant provided a certified copy of the court docket issued by the Municipal Court of San Fernando, [REDACTED]. The court documents reveal that on March 6, 1996, the applicant pleaded *nolo contendere* to one count of violating section 470 of the California Penal Code – *forgery*, and that this offense is listed as a

felony. Two remaining counts of violating section 118 of the California Penal Code – *felony perjury*, were dismissed pursuant to the terms of a plea agreement. The applicant was ordered to perform an unspecified amount of community service as well as to serve a term of probation. The court documents do not reflect the sentence imposed, but indicate that the term of probation was repeatedly extended because of the applicant's failure to pay court ordered restitution. Probation was ultimately terminated on December 2, 2002, and the applicant's petition to reduce the felony conviction to a misdemeanor offense pursuant to section 17(b) of the California Penal code was denied.

The applicant provides no records to explain arrest No. 3 listed above beyond the notation, "warning – no charge." The explanation provided by the applicant is not sufficient to meet his burden of proof as outlined in the RFE. Therefore, the AAO concludes that this arrest remains unresolved.

The applicant also submitted a certified court disposition for an arrest and conviction previously not identified in the record. On December 13, 1991, the applicant pleaded *nolo contendere* to one count of violating section 23109(c) of the California Vehicle Code – *unlawful exhibition of speeding on a highway*, [REDACTED] and was sentenced to 24 months probation and 8 days in jail. This offense is listed as a misdemeanor.

Ultimately, the applicant submitted certified court records for an additional misdemeanor conviction also not previously identified in the file. On August 17, 2004, the applicant pleaded *nolo contendere* to one count of violating section 66.28 LAM, [REDACTED] and was sentenced to 12 months probation and one day in jail. This offense is listed as a misdemeanor. The conviction records do not explain the nature of this charge, but we note that the terms of probation prohibit the applicant from using the recycling bins belonging to other persons or businesses.

For purposes of qualifying for certain immigration benefits, 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.18(a)(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 (Act), 8 U.S.C. § 1101(a)(48)(A).

Having reviewed all of the evidence previously contained the file as well as the evidence submitted by the applicant in response to the RFE dated June 4, 2009, the AAO concludes that the applicant is not eligible for temporary resident status on account of the felony conviction, additional two misdemeanor convictions, and the two arrests which remain unresolved on appeal. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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