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[Redacted]

FILE: [Redacted]  
MSC 06 097 10426

Office: LOS ANGELES

Date: SEP 24 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:

[Redacted]

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 decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 because the applicant had multiple criminal convictions in the state of California, including two convictions for DUI, a conviction for carrying a concealed weapon, and a conviction for sex with a minor less than 16 years of age. 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 applicant is represented by counsel on appeal. Counsel waived the right to submit a written brief or statement on the Notice of Appeal (Form I-694). No new evidence was submitted in support of the appeal, and the Form I-694 remains blank.

Federal regulatory provisions governing an appeal from a legalization decision by the district director state, in pertinent part, that an appeal which is filed that fails to state the reason for appeal or is patently frivolous will be summarily dismissed. *See* 8 C.F.R. § 103.3(a)(3)(iv).

A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not specifically addressed the basis for denial. The appeal must therefore be summarily dismissed.

Additionally, 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 (Act), 8 U.S.C. § 1101(a)(48)(A).

The AAO has reviewed the record despite the applicant's failure to identify an error on the part of the district director. We agree with the director's conclusion that the applicant's criminal record, listed as follows, precludes his eligibility for temporary resident status:

- 1) [REDACTED] California Vehicle Code Section 23152(b) – driving with .08% blood alcohol. September 22, 1988;
- 2) [REDACTED] California Vehicle Code Section 23103 – reckless driving. August 14, 1990;
- 3) [REDACTED] California Vehicle Code Section 23152(b) – driving with .08% blood alcohol; August 14, 1990;
- 4) [REDACTED] California Penal Code Section 12025(b) – carrying concealed weapon on person; June 6, 1990; and
- 5) [REDACTED] California Penal Code Section 261.5(d) – sex with a minor less than 16 years of age; April 2, 1996.

Additionally, the record before the AAO contains a photocopy of a DMV printout dated September 28, 1988, that reveals additional charges. The applicant was convicted on March 9, 1988 for violating three specific sections of the California Vehicle Code: section 16028(a) – failure to produce evidence of financial responsibility for motor vehicle when requested; section 12951(a) – failure to demonstrate immediate possession of a valid driver's license; and section 22350 – failure to drive at a reasonable speed. [REDACTED] The record is unclear regarding the punishment or fine imposed for this incident. The disposition code on the record indicates "bail forfeiture."

The AAO notes that the sexual assault conviction is a felony, which of itself, disqualifies the applicant for temporary resident status, as explained *supra*. The remaining convictions are misdemeanor offenses and, viewed together, exceed the number of permissible misdemeanor convictions under the terms of the settlement agreements.

The appeal is subject to summary dismissal. Additionally, the applicant is ineligible for temporary residence on criminal grounds. 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). No waiver of such ineligibility is available. The decision of the director is affirmed.

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