

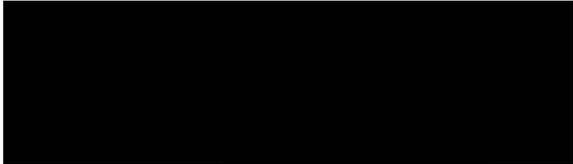
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services



41

FILE: [Redacted]
MSC 07 135 11655

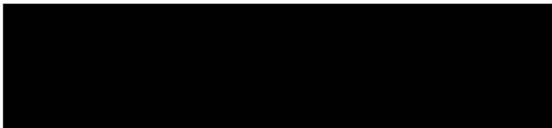
Office: FRESNO

Date: SEP 30 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:



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, Fresno. 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 was convicted of nine misdemeanor offenses in the state of California between 1986 and 1990, including two convictions for driving without a license, two convictions for failure to appear, three convictions for driving while intoxicated, and two convictions for driving with a suspended or revoked license. 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 requested, and was granted, a thirty day extension of time to submit a brief or statement in support of the appeal. On September 18, 2007, counsel submitted a one page statement. Counsel does not contest the number of the convictions nor the offenses for which the applicant was charged. Counsel argues that, aside from the DUI convictions, the remaining convictions involve “driving violations only.”

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The

inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period, that he has no disqualifying criminal convictions, and is thus otherwise admissible to the United States. In this case, the applicant has failed to meet this burden because of his multiple misdemeanor convictions.

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 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).

A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. The record before the AAO contains police records that list a series of arrests and convictions:

1. a conviction on February 12, 1986 for failure to possess a valid license (section 12951(a) Vehicle Code), and for driving in excess of the speed limit (section 22348(a) Vehicle Code).
2. a conviction on July 14, 1986 for driving at an unreasonable rate of speed (section 22350 Vehicle Code), and for driving without a license (section 12500 Vehicle Code).

3. a conviction on April 1, 1987 for driving at an unreasonable rate of speed (section 22350 Vehicle Code), for failure to possess a valid license (section 12951(a) Vehicle Code), and for failure to appear in court (section 40508(a) Vehicle Code). [REDACTED]
4. a conviction on August 20, 1987 for failure to obey a traffic signal (section 21461(a) Vehicle Code). [REDACTED]
5. a conviction on September 16, 1987 for failure to obey traffic direction (section 21657 Vehicle Code), and for failure to use a safety belt (section 27315(d) Vehicle Code). [REDACTED]
6. a conviction on October 6, 1987 for failure to use a safety belt (section 27315(d) Vehicle Code), and for exceeding the maximum speed limit (section 22349 Vehicle Code). [REDACTED]
7. a conviction on February 10, 1989 for failure to provide evidence of financial responsibility for a vehicle upon demand by an officer (section 16028(a) Vehicle Code), for driving without a license (section 12500 Vehicle Code), and for failure to appear in court (section 40508(a) Vehicle Code). [REDACTED]

The AAO observes that the applicant's two convictions for driving without a license, and two convictions for failure to attend a scheduled court hearing are considered misdemeanor offenses in California.

The police record also indicates that the applicant was convicted on November 9, 1988, for two counts of violating section 23152(a) of the California Vehicle Code – driving while intoxicated, for a violation of section 14601(a) of the California Vehicle Code – driving with a suspended or revoked license, and for a violation of section 23207 of the California Vehicle Code – violating the terms of probation. [REDACTED] The applicant was sentenced to 36 months probation. All three offenses are misdemeanor crimes.

Thereafter, the applicant was once again convicted on March 9, 1990, for a violation of section 16028(a) of the California Vehicle Code - failure to provide evidence of financial responsibility for a vehicle upon demand by an officer, for a violation of section 14601.2 of the California Vehicle Code – driving with a license suspended for driving while intoxicated. The applicant was sentenced to 36 months probation. [REDACTED]

Additionally, FBI records reveal a 1999 conviction for a violation of section 271(a) of the California Penal Code – failure to pay support for a child under 14 years of age. The applicant was sentenced to 60 months probation for this offense. Our review of the California criminal statutes reveals that this offense is considered a misdemeanor.

In light of the criminal records contained in the file, the AAO concludes that the applicant is clearly not eligible for temporary resident status, as an alien who has been convicted of three or more

misdemeanors committed in the United States. 8 C.F.R. § 245a.2(c)(1). Therefore, the applicant failed to meet his burden of proof to establish eligibility for temporary resident status.¹

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

¹ The record before the AAO also contains a decision dated March 2, 1993, denying the applicant's request to adjust status from temporary to permanent resident status. The application was denied on criminal grounds.