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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

Office: HIALEAH

Date MAR 30 2011

IN RE:

Applicant:

APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a; Application for Temporary Residence (Regular Form I-687) (in addition to I-698).

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 remanded for further action, you will be contacted.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary resident status to permanent resident status was denied by the Director, Hialeah, Florida on March 15, 2007. The applicant filed a timely appeal. On May 22, 2007, United States Citizenship and Immigration Services (USCIS) reopened the application on Service Motion. On March 26, 2010, USCIS issued a second Notice of Denial (NOD) noting that the applicant was ineligible for adjustment from temporary resident status to permanent resident status due to her felony conviction. The applicant filed a timely appeal which is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director determined that the applicant was ineligible for permanent resident status because she had been convicted of a felony.<sup>1</sup>

The record reveals that on March 8, 1999, the applicant was convicted in Circuit Court of Broward County, Florida of Grand Theft in the Third Degree, a felony ( ). The director noted that since the applicant was convicted of a felony, she was ineligible for adjustment from temporary to permanent resident status.

On appeal, the applicant does not dispute her conviction or assert that her conviction was not a felony. Rather, she asserts that she “. . . involuntarily and without full appreciation of her rights accepted the plea agreement even though it was her first and only offense in the United States . . . (she) has retained the Law Offices of ( ) to file a Motion to Withdraw Plea and Vacate Sentence . . .” The applicant asserts, through counsel, that by withdrawing her plea and vacating her sentence, she will not have a conviction on her record and she will be eligible to adjust status. The record does not contain any evidence that her conviction has been vacated.

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).

In this case, there is no evidence in the record to suggest that the applicant's felony conviction has been vacated, despite counsel's assertions on appeal. Furthermore, even if the conviction were vacated pursuant to a state rehabilitative statute, the conviction would remain valid for immigration purposes.

An alien applying for adjustment of status has the burden of proving that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, *and is*

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<sup>1</sup> It is noted that the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status on March 21, 2007.

*otherwise eligible for adjustment of status under this section.* 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden and therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The director shall continue adjudication of the applicant's Form I-687 Application for Temporary Resident Status in accordance with this decision.