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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**



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Date: **AUG 22 2012** Office: LOS ANGELES

FILE: 

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 remanded for further action, you will be contacted.

Perry Rhew
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 of the Los Angeles office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the I-687 application, concluding that the petitioner did not establish that 1) she had continuously resided in the United States in an unlawful status for the duration of the requisite period, based on both a lack of documentation and inconsistent documentation in the record of proceedings; or 2) she was eligible for temporary resident status, based on her having been convicted of multiple misdemeanors in the United States.

On appeal, the applicant asserts that the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite period.¹ The applicant stated that she would submit a brief within 30 days of appeal. The applicant has not submitted a brief or any additional evidence on appeal.²

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. The applicant has not addressed this stated ground for denial, nor has she presented additional evidence relevant to this ground for denial or the stated reason for appeal. Thus, the appeal must therefore be summarily dismissed on this basis.

The next issue to address in this case is whether the applicant has established that she is not ineligible for temporary resident status on the basis of multiple criminal convictions. On appeal, the applicant asserts that she does not have any misdemeanor convictions, but only convictions for infractions which do not render her ineligible for temporary resident status. As stated above, the applicant has not submitted a brief or any additional evidence on appeal.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status under the provisions of the Immigration and Nationality Act (the Act). Section 245A(a)(4)(B) of the Act; 8 U.S.C. § 1255(a)(4)(B).

The regulations provide relevant definitions at 8 C.F.R. § 245a. "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 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).

¹ The AAO notes that the applicant's FOIA request, NRC [REDACTED] was processed on April 18, 2012.

² The documents which the applicant submits on appeal have previously been submitted into the record.

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 Act; 8 U.S.C. § 1101(a)(48)(A).

The record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses:

- On August 22, 1990, the applicant was charged with violating the California Vehicle Code (VC), section 40508(a), *failure to appear*, and section 40508(b), *failure to pay fine*. Although the record reflects that the applicant was sentenced to 6 days in jail, the final disposition of each charge is not known. (Orange County Jail, Santa Ana, California, case number 1247685)
- On April 3, 1991, the applicant was charged violating the California Vehicle Code (VC), section 40508(a), *failure to appear*, section 26710, *defective windshield*, and section 24603, *defective stop lamps*, respectively. The record does not reflect a final disposition for the charges, and the case has apparently been destroyed. (Superior Court of California, County of Orange, case number 652459)
- On August 24, 1992, the applicant was charged with misdemeanor violations of the California Vehicle Code (VC), sections 40508(a), *failure to appear*, section 40508(b), *failure to pay fine*, section 16028(a), *no evidence of financial responsibility*, section 26710, *defective windshield*, and section 24603, *defective stop lamps*, respectively. Although the record reflects that the applicant was fined approximately \$833, the final disposition of each charge is not known. (Orange County Jail, Santa Ana, California, case number 1413009)
- On December 15, 1998, the applicant was charged with violations of the California Vehicle Code (VC), sections 4000(a), *failure to register vehicle*, and 40508(a), *failure to appear*. The record does not reflect a final disposition for the charges, and the case has apparently been destroyed. (Superior Court of California, County of Orange, case number SAH75692)³

Section 40508 of the California Vehicle Code states:

³ In addition, the record reflects that from 2001 through 2006 the applicant was arrested for approximately eleven additional infractions under the California Vehicle code. The applicant pleaded guilty to one of the infractions occurring on December 28, 2002, and all of them were dismissed. For purposes of applying for adjustment to temporary resident status, the applicant's conviction for an infraction does not constitute an additional basis of ineligibility.

(a) Any person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail **is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.**

(b) Any person willfully failing to pay a lawfully imposed fine for a violation of any provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due **is guilty of a misdemeanor regardless of the full payment of the fine after such time.**

(Emphasis added.)

In addition, Section 40000.25 of the California Vehicle Code specifically states that a violation of section 40508, relating to failure to appear or to pay fine, shall constitute a misdemeanor, and not an infraction.

Declarations by an applicant regarding her criminal record are subject to verification of facts by United States Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.3(g)(5). The applicant failed to submit evidence to establish the criminal dispositions of four of her arrests, as requested. This is another basis upon which the appeal must therefore be summarily dismissed.⁴

To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period, and has failed to establish that she is

⁴The AAO notes that on August 14, 2007, the director denied the applicant's CSS Class Membership Worksheet (I-687 Supplement), and the applicant appealed the decision to the Special Master. On August 25, 2010 the Special Master determined that the applicant's criminal record did not render the applicant ineligible for CSS class membership, because "[a]s Ms. [REDACTED] [1990 and 1992] arrests originated with minor traffic tickets, and her lack of understanding as to the necessity of appearing in court to deal with the citations, the Special Master does not find that these convictions make her inadmissible pursuant to any provision of the Immigration and Nationality Act, or bar her from class membership. Moreover, the court dismissed the 'convictions' and the files have since been destroyed." The AAO does not agree with the Special Master's decision. Firstly, the statute clearly states that an offense under section 40508 is a misdemeanor. Secondly, the record does not reflect that the applicant's 1990 or 1992 convictions were dismissed; as is stated above, the record reflects that the applicant's infractions from 2001 through 2006 have been dismissed. Further, the Special Master's determination regarding the applicant's eligibility for CSS Class Membership is separate from the determination of the applicant's eligibility for Temporary Resident Status.

admissible to the United States, and not ineligible for temporary resident status on the basis of multiple criminal convictions.

As stated above, a review of the decision reveals the director accurately set forth legitimate bases for denial of the application. On appeal, the applicant has not addressed the grounds stated for denial, nor has she presented additional evidence relevant to the grounds for denial or the stated reason for appeal. The appeal must therefore be summarily dismissed.

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