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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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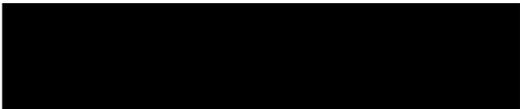


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DATE: **JAN 20 2012**

Office: NEW YORK

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

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on April 24, 2005. On January 9, 2007, the director denied the application noting that the applicant failed to respond to a Request for Evidence (RFE) issued by United States Citizenship and Immigration Services (USCIS) on October 5, 2006, requesting the final court dispositions for all of the applicant's arrests. Thus, the director indicated that the application was abandoned.

USCIS subsequently informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. He was informed that he was entitled to file an appeal with AAO which must be adjudicated on the merits. Additionally, on February 10, 2011, the director issued a second Notice of Decision (NOD) notifying the applicant that he failed to submit the required documents relating to his criminal history. The applicant was informed that he was entitled to appeal that decision to the AAO. The applicant submitted a timely appeal; however, he does not address the issue of his criminal records. The applicant, through counsel, states only that he is eligible for temporary resident status.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to comply with USCIS' request to provide the final court dispositions for his arrests and therefore, he has failed to establish his eligibility for temporary resident status or that he is admissible to the United States.

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

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The record contains a Federal Bureau of Investigation (FBI) identification record, based upon the applicant's fingerprints, which reflects the following information relating to the applicant's criminal history:

- An arrest on [REDACTED] by New York Police Department and subsequent conviction on [REDACTED] for *Criminal Sale of a Controlled Substance*.
- An arrest on [REDACTED] by Newburgh Police Department, New York and subsequent conviction/confinement on [REDACTED] for *Criminal Possession of a Narcotic Drug with Intent to Sell*, a felony.
- An arrest on [REDACTED] using alias Samuel Powell, by New York Transit Police, for three misdemeanors: *Intent to Commit Fraud*, *Resisting Arrest* and *Displaying Obscene Language and/or Gestures*.
- An arrest on [REDACTED] using alias [REDACTED] by New York Police Department and subsequent conviction for *Criminal Sale of a Controlled Substance (5th offense)*, a felony.
- An arrest in Bergen County, New Jersey and subsequent conviction on [REDACTED] for *Possession of Cocaine*, a felony and sentenced to eight years of incarceration in the New Jersey State Penitentiary.

Thus, the applicant is ineligible for temporary resident status due to his multiple felony convictions. Furthermore, pursuant to Section 212(a)(2)(A)(i)(II) of the INA, Crimes Involving Controlled Substances (CCS), an alien is inadmissible to the United States if he/she has committed acts which constitute the essential elements of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the U.S., or a foreign country relating to a controlled substance. The applicant's drug convictions render him inadmissible to the United States on this basis.

While the applicant has been provided multiple opportunities to submit final court dispositions for the above mentioned arrests, he has failed to do so. Thus, the AAO finds the applicant failed to establish his eligibility for temporary resident status and his admissibility to the United States.

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