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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**



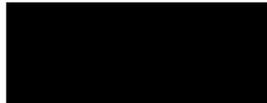
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DATE: **MAY 14 2012**

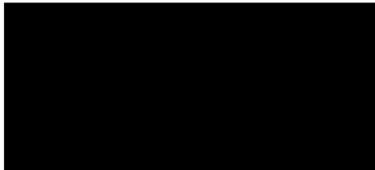
Office: HIALEAH

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 applicant's temporary resident status was terminated by the Director, Texas Service Center on June 2, 2011. 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 temporary resident status because her Form I-698 Applicant to Adjust from Temporary to Permanent Resident Status was denied by the Director, Hialeah, Florida on March 15, 2007. The director denied the application because the applicant has been convicted of a felony. The Director noted that Section 245A(b)(2) of the Act requires temporary resident status to be terminated in cases where the application for adjustment (Form I-698) has been denied.

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 (Case no. [REDACTED]).

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 [REDACTED] 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 applicant further asserts that she was not advised of the consequences of her criminal conviction or plea by her attorney, and therefore, indicates that her plea was given involuntarily. The record does not contain any evidence that her conviction has been vacated, nor does the applicant provide any evidence or specific testimony to support her assertions on appeal.

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.

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.

The applicant has also asserted on appeal that she was not advised of the consequences of her criminal conviction due to ineffective assistance of counsel. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3)

that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In this case, the applicant has not provided any evidence supporting her assertions.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence status. Any temporary resident status previously granted to the applicant is terminated.

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