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

(b)(6)

Date: FEB 1 1 2014 Office: WASHINGTON

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Washington Field Office Director denied the application for temporary resident status and the matter 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 for Determination of Class Membership in CSS v. Thornburgh (now known as the CSS/Newman Class). The director denied the application for temporary residence, finding the applicant failed to establish that he had resided in the United States for the requisite periods, was admissible to the United States and was otherwise eligible for adjustment to temporary resident status.

On appeal, the applicant asserts that the director violated the CSS/Newman Settlement Agreements by failing to give more weight to the evidence submitted.

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 established his eligibility for temporary resident status pursuant to the terms of the settlement agreements. The AAO has reviewed the evidence of record, including the applicant's criminal record, and concludes that the applicant has not met his burden of proof to establish his eligibility for temporary resident status pursuant to the settlement agreements.

The record before the AAO reveals that the applicant has multiple criminal convictions. 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).

> 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).

The record reflects the applicant has at least two felony convictions. On December 2, 2013, the AAO issued a notice of intent to deny/request for additional evidence (NOID/RFE). The AAO provided the applicant with an opportunity to submit court documents to explain his nine arrests. The applicant failed to respond to the NOID/RFE.

The record shows that on November 27, 1991, the applicant was arrested and charged with *driving under the influence*, a misdemeanor. The charge was amended to *driving while intoxicated (third offense within ten years),* a felony in violation of section 18.2-266 Code of Virginia. See VA Code Section 18.2-270C. On May 26, 1992, he was found guilty of the charge in the [redacted] court, and sentenced to jail for a period of 12 months and payment of a fine of $2500.00. Case [redacted]

The record further shows that on April 22, 2002, the applicant was arrested and charged with *Failure to Appear*, a felony, *FTA*, and convicted on the charge on February 24, 2006 in the [redacted] General District Court, Case [redacted]. Pursuant to VA Code Section 19.2-12.8, a conviction for failing to appear on a felony offense is a Class 6 felony.

The applicant stands convicted of two felonies. He is therefore ineligible for temporary resident status pursuant to 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). No waiver of such ineligibility is available. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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