U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: Applicant: [redacted]

AUG 18 2003

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: Self-represented

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Western Service Center, is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because of the applicant's criminal record.

On appeal, the applicant failed to address the grounds for termination. He requested a copy of his legalization file and an extension of 30 days after receipt of the Bureau file in which to submit a brief. The Bureau complied with this request for a copy of the record on November 25, 2002. The file contains the copy of the record which was returned to the Bureau by the U.S. Postal Service marked "Attempted-Not Known." The copy of the record was sent to the applicant's address of record. Consequently, the applicant's failure to receive the notice was of his own making. The file contains no further communication from the applicant.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals the director accurately set forth a legitimate basis for termination of status. On appeal, the applicant has not presented additional evidence in support of the claim. Nor has the applicant addressed the grounds stated for the termination. The appeal must therefore be summarily dismissed.

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

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Washington, D.C. 20536

[redacted]

AUG 18 2003

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: Applicant: [redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended. 8 U.S.C. 1255a

ON BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because of the applicant's criminal record.

On appeal, the applicant states that denial of his application to adjust his status would result in extreme hardship to his two U.S. citizen children.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(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).

"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 such alien 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).

The record reveals the following offenses in the state of California:

1. The applicant was arrested on February 20, 1992 and was later convicted for a violation of section 488 PC, petty theft, a misdemeanor.

2. The applicant was convicted on July 15, 1992 for a violation of section 273.5A PC, inflict corporal injury spouse/cohabitant, a felony.

3. The applicant was convicted on November 13, 1992 for a violation of section 245(a)(1) PC, assault with deadly weapon, a felony; a violation of section 273.5, PC, corporal injury inflicted upon family resulting in traumatic condition, a felony, and, a violation of section 27315(d) VC, operating a motor vehicle without a seat belt, a misdemeanor.

4. The applicant was arrested on January 30, 1993 and was later convicted for a violation of section 40508(b) VC, failure to pay fine, a misdemeanor.

5. The applicant was convicted on June 15, 2000 and was later convicted for a violation of section 242 PC, battery, a misdemeanor.

6. The applicant was convicted for a violation of section 666 PC petty theft with a prior, a misdemeanor.

The applicant is ineligible for adjustment to permanent resident status because of his multiple convictions. 8 C.F.R. § 245a.3(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. 245a.2(d)(5). The applicant has failed to meet this burden.

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