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**U.S. Citizenship
and Immigration
Services**



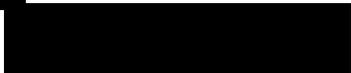
FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 02 2004

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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. 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 for

Robert P. Wiemann, Director
Administrative Appeals Office

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

The director denied the application because the applicant had been convicted of three misdemeanors and was statutorily ineligible to adjust status under 8 C.F.R. § 245a.2(c)(1).

On appeal, the applicant stated that he applied for an expungement of his criminal offenses. However, as of the date of this decision, the applicant has failed to submit any additional material in support of his appeal. Therefore, the record shall be considered complete.

Pursuant to 8 C.F.R. § 245a.2(c)(1), an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status.

"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 as stated in 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).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802). Section 212(a)(2)(A)(i)(II) of the INA, formerly section 212(a)(23) of the INA. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the INA, formerly section 212(a)(23) of the INA.

The record reveals that the applicant was convicted of the following misdemeanor offenses in California Superior Court:

- 1) Driving under the influence of alcohol and/or drugs on July 19, 1984;
- 2) Driving without a license on July 19, 1984; and
- 3) Hit and run resulting in property damage on July 19, 1984.

In addition, the record shows that the applicant was subsequently convicted of the following felony offense involving a controlled substance in California Superior Court:

- 1) Possession of methamphetamine on August 25, 1995.

Expungement of drug-related convictions will not eliminate the convictions as a bar to legalization eligibility. See *Matter of Ozkok*, 19 I. & N. Dec. 546 (BIA 1988); *Matter of A-F-*, 8 I. & N. Dec. 429 (BIA, A.G. 1959). Furthermore, any pardon granted by the President of the United States or by the governor of any state would likewise be ineffective in overcoming the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of

the INA. See *Matter of Lindner*, 15 I. & N. Dec. 170, 171 (BIA 1975); *Matter of Lee*, 12 I. & N. Dec. 335, 337 (BIA 1967); *Matter of Yuen*, 12 I. & N. Dec. 325, 327 (BIA 1967).

The applicant is ineligible for temporary resident status because of his convictions. 8 C.F.R. § 245a.2(c)(1). In addition, he is inadmissible under section 212(a)(2)(A)(i)(I) of the INA. Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States. Furthermore, there is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(I), section 212(a)(2)(A)(i)(II), or section 212(a)(2)(C) of the INA except for a single offense of simple possession of thirty grams or less of marijuana. See section 245A(d)(2)(B)(ii) of the INA.

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 INA, 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.