U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 30 2004

IN RE: Applicant: [redacted]

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The director based the termination on the fact that the applicant had been arrested numerous times, and had failed to demonstrate that he had been cleared of the charges. On appeal, the applicant provides the necessary dispositions.

The status of an alien lawfully admitted for temporary residence under section 245A of the Act may be terminated if he is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 245a.2(u)(1)(iii).

"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.

"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).

When the applicant's status was terminated, the court dispositions that he had provided were not yet entered into the record. Subsequent to this appeal, the dispositions were placed in the record, and the director used them to deny the applicant's pending application for adjustment from temporary to permanent resident status. In that decision the director listed the applicant's five misdemeanor convictions. In light of that, and the fact that the applicant has not appealed that decision, the convictions will only be briefly reiterated here, and the unresolved arrests will not be addressed.

The applicant was convicted of Inflicting Corporal Injury on Spouse on July 31, 1987. On November 29, 1988 he was convicted of Driving Under the Influence With a Blood Alcohol Count of .10% or More, and of Unlicensed Driver. He was again convicted of the latter charge on March 9, 1989. Finally, on November 14, 1989, he was convicted of Driving Under the Influence of Alcohol, Drugs, or Both, and of Driving When License Has Been Suspended or Revoked for Reasons Other Than Driving Ability. These misdemeanor convictions all took place in California.

Within the legalization program, no waiver is available to an alien convicted of a felony or three or more misdemeanors committed in the United States. The applicant is ineligible for temporary resident status.

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