



U.S. Citizenship
and Immigration
Services

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AUG 16 2005

FILE: [REDACTED]

Office: California Service Center

Date:

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

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

The director denied the application because the applicant failed to provide a disposition relating to his criminal record.

On appeal, the applicant provides statements from the Los Angeles Judicial District, County of Los Angeles, concerning record checks that were conducted.

An alien is ineligible for temporary residence if he has been convicted of a felony, or three or more misdemeanors committed in the United States. *See* 8 C.F.R. § 245a.2(c)(1). Also, an alien is inadmissible to the United States if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. *See* Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

"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).

According to the officer that interviewed the applicant for temporary residence on June 22, 1988, the applicant stated that he had been convicted of Driving Under the Influence in 1985, and had served nine months imprisonment. The officer noted that there were injuries in the incident, and indicated that the applicant may have been convicted of a felony.

Applicants for temporary residence were required to submit evidence that demonstrated that they resided in the United States for the requisite 1982-88 period. One of the documents furnished by the applicant in an effort to establish that he resided in the United States is a progress report showing that he, the inmate, was enrolled in a course at the CRC institution from August 12, 1985 to September 30, 1985. From this it is concluded that he definitely was convicted, possibly of something more severe than Driving Under the Influence. It is also concluded that he served a significant sentence, possibly the nine-month period he alluded to, as he would have not been enrolled in a course while incarcerated if it was intended that he would only serve a very minimal sentence. It is entirely possible, given the lengthy sentence, that the applicant was convicted of a felony, whether or not it was a crime involving moral turpitude.

On June 22, 1988, the day of the temporary residence interview, the interviewing officer issued the applicant a notice that directed him to furnish the court record for that 1985 offense. The applicant did not do so, and

four months later the director mailed another notice to the applicant that pointed out the necessity of providing the court record regarding the 1985 conviction. Although the applicant received the notice, he did not comply with it. The application was denied on August 3, 1993.

On appeal, the applicant provides two statements dated August 12, 1993 from the Los Angeles Judicial District, County of Los Angeles. One statement indicates: "Docket and/or case file has been destroyed. Any case filed before 1986 has been destroyed and no further information is available." The other statement shows that the Los Angeles Superior Court criminal index was searched for 1985 and no record was discovered relating to the applicant.

The applicant obtained these statements, and then furnished them, approximately eight years after the conviction, and five years after the director advised him to submit them. He apparently made no effort to comply with the requests for the disposition of the case prior to the denial of his application. There is no reason to believe that, had he requested the 1985 disposition from the court in 1988, it would have already been destroyed.

Declarations by an applicant pertinent to his criminal record are subject to a verification of facts by the Service. The applicant must cooperate fully in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a negative determination. *See* 8 C.F.R. § 245a.2(k)(5). The applicant failed to provide a document necessary for the adjudication of the application, thereby preventing the Service from determining that he was not convicted of a felony or a crime involving moral turpitude.

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