



U.S. Citizenship
and Immigration
Services

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AUG 17 2005

FILE:



Office: California Service Center

Date:

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. 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, reopened, and denied again by the Director, Western Service Center. The matter is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to provide a medical report and an "H-6" report from the California Department of Motor Vehicles (DMV) regarding his vehicular criminal record. The applicant appealed, and provided the medical report and a "K-4" DMV report. The director reopened the matter, but denied the application again, as the K-4 report did not show the final dispositions of some of the charges lodged against the applicant. The applicant did not respond to the latter denial.

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).

The applicant was convicted of the misdemeanor offense of Driving with Blood Alcohol Content of .10% or More on September 13, 1988. He was also arrested on June 8, 1990 for two misdemeanor offenses, Failure to Appear and Unlicensed Driver. These offenses took place in California.

Although given many opportunities, the applicant has never provided the disposition of the June 8, 1990 arrest. He has failed to establish that he was not convicted of the two charges lodged against him. Therefore, he has failed to establish that he was not convicted of three misdemeanors.

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 three misdemeanors.

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