

PUBLIC COPY



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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



L1

FILE:



Office: California Service Center

Date: **AUG 18 2005**

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 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 terminated the applicant's status because the applicant had failed to provide criminal records, additional proof of residence and common identity, a California DMV report, HIV test results, and evidence regarding an absence. The director concluded that this prevented him from determining the applicant's eligibility.

On appeal, the applicant provided criminal records, the DMV report, and sufficient evidence of residence, common identity and reason for absence.

Temporary residence (legalization) applicants such as this one who applied before January 1, 1988 did not have to provide actual HIV test results. Only a clinical observation was required, and the applicant's Form I-693 medical examination report shows such observation was conducted. Thus, regarding temporary residence, the medical requirement has been met.

Similarly, the applicant has furnished sufficient evidence to meet the residence, common identity and absence requirements.

Temporary resident status may be terminated if the alien is convicted of a felony or three or more misdemeanors, or if he commits an act that makes him inadmissible to the United States, or if it appears that he was not eligible for such status in the first place. See section 245A(b)(2) of the Act; 8 U.S.C. § 1255a(b)(2).

"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 notes of the interviewing officer, during his interview for temporary resident status on December 18, 1987 the applicant indicated that he had been arrested or convicted for Driving Under the Influence in 1981 and 1986. The officer did not specify whether the applicant indicated those were *arrests* or *convictions*. The director's subsequent notice of intent to terminate advised the applicant to provide the dispositions of those cases. The applicant provided records showing he was convicted of Driving Under the Influence on December 5, 1986 and Driving With .08% Blood Alcohol Content on July 19, 1988. These

misdemeanor convictions also appear on the California DMV report. The 1981 arrest or conviction does not, although there is no information indicating that the offense took place in California. The applicant did not provide any document regarding the 1981 offense.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate 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 has not provided evidence, such as a court record, or a letter from the court or state Department of Justice, indicating whether he was convicted in 1981 of Driving Under the Influence. It is important to note that the applicant has not stated that he was not convicted.

It is concluded that the applicant has failed to provide a document regarding the 1981 offense necessary to establish that he was not convicted of three misdemeanors. Therefore, the appeal must be dismissed on that basis.

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