



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: California Service Center

Date: **AUG 24 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 application for temporary resident status was denied by the Director, Western Service Center. It was reopened and denied by the Director, California Service Center. The matter is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The application was initially denied because the applicant failed to provide sufficient evidence of residence and court records regarding his criminal record. The applicant appealed, and provided court records and documents attesting to his residence. The documents were deemed to be insufficient, and the application was denied again. 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).

On appeal, the applicant has provided a court record indicating he pled guilty to Assault With a Deadly Weapon (misdemeanor) on September 30, 1981. While mere Assault and Battery, and Simple Assault, have been found not to involve moral turpitude, such is not true of Assault With a Deadly Weapon. *See Matter of O--*, 3 I&N Dec. 193 (BIA 1948); *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974); *Matter of S-*, 5 I&N Dec. 668 (BIA 1954).

Regarding the other charge for which the applicant was specifically directed to provide a disposition, Carry Loaded Firearm in Public Place (misdemeanor), he has only furnished a record showing that he was not in court on October 15, 1984, and that a warrant was issued. He has failed to establish that he was not convicted of this charge. This may or not be the same charge shown on the Federal Bureau of Investigation report, which shows Carry Loaded Firearm in Public Place, November 24, 1984.

The applicant indicated on his application that he was arrested, convicted or confined in prison for Driving Under the Influence in 1985. The director's notice advised the applicant to provide court records for all

offenses, but the applicant has not furnished anything regarding this incident. He has failed to establish that he was not convicted of this charge also.

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 resolving at least two charges, thereby preventing the Service from further determining his admissibility.

Also, an applicant for temporary resident status must establish that he or she entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date and through the date the application is filed. *See* Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A).

An applicant for temporary resident status under section 245A of the Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6).

The applicant claims to have resided in the United States since June 1979. He relies on the following documents to establish that he resided continuously in the United States:

- A photocopy of an affidavit from [REDACTED] dated March 18, 1988, stating the applicant rented property from her at [REDACTED] from August 1979 to March 18, 1988;
- A photocopy of an affidavit in the same format from [REDACTED] dated March 12, 1988, stating the applicant worked for him from July 25, 1979 to March 12, 1988;
- The applicant's California driver's license, issued in 1985;
- Another affidavit from [REDACTED] dated September 10, 1983, stating the applicant lived with her at [REDACTED] since November 15, 1987;
- An affidavit from the applicant, dated September 10, 1983, stating he lived at [REDACTED] from November 15, 1993.

As pointed out by the director, the applicant did not provide the original affidavit from the stated employer [REDACTED] even though the affidavit was directed to the Immigration and Naturalization Service. The affiant is the brother of the applicant, and was an applicant for legalization himself, and therefore it is not clear if *he* was found to have resided continuously in the United States.

The photocopy of the 1988 affidavit from [REDACTED] contains an inked entry showing the applicant commenced residing at her property in August 1979. All indications are the original affidavit did not show when he commenced residing; therefore, the altered affidavit is suspect.

The only contemporaneous documentation to establish presence in the United States during the requisite period is the photocopy of the applicant's 1985 driver's license, showing an address at which he did not claim on his application to have resided. In light of the fact that the applicant claims to have continuously resided in the United States, his ability to produce only one contemporaneous document of residence and one original unaltered affidavit from someone other than himself raises serious questions regarding the credibility of the claim.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The very minimal amount of evidence here cannot be described as "extensive."

Given these factors, it is concluded that the applicant has failed to establish that he resided continuously in the United States for the required period. Furthermore, he was convicted of a crime involving moral turpitude, and failed to provide a clearance concerning another criminal charge.

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