



U.S. Citizenship  
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FILE:



Office: California Service Center

Date:

JUL 12 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 Regional Processing Facility, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because of the applicant's criminal record.

On appeal, the applicant states that he is a good worker who only engaged in one criminal incident. He provides character references.

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).

"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).

As stated by the director, the applicant was convicted of Attempt to Receive Stolen Property, a misdemeanor, and Sale of Cocaine, a felony, on October 4, 1985. The applicant has not challenged the fact of these convictions. Because of his felony conviction, the applicant remains ineligible for temporary resident status.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). The cocaine conviction renders the applicant inadmissible under this section.

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