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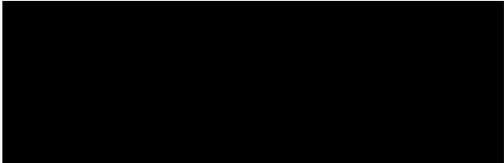
U.S. Department of Homeland Security
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**U.S. Citizenship
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Services**

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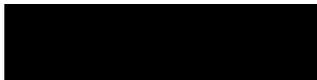


Office: CALIFORNIA SERVICE CENTER

Date: MAY 23 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 sustained.

The director terminated the applicant's status because the applicant failed to provide dispositions relating to criminal charges lodged against him.

On appeal, counsel provides a letter from the Department of Justice, State of California indicating the criminal history of the applicant according to the files of that bureau. He also provides a certification of "no record" from the Municipal Court of California, County of Los Angeles, Los Angeles Judicial District.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated if he is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 245a.2(u)(iii). Also, such status may be terminated if the alien was ineligible for temporary residence. 8 C.F.R. § 245a.(2)(u)(i). Finally, status may be terminated if the alien commits an act which renders him inadmissible as an immigrant. 8 C.F.R. § 245a.2(u)(ii).

When the applicant was interviewed for temporary residence on September 8, 1988, he indicated to the interviewing officer that he had been arrested for Carrying an Open Container in 1983, and for another offense involving his common-law wife in 1986. There is no indication that the officer who interviewed the applicant required him to indicate whether he had actually been convicted. That officer, however, did recommend that the application be granted, which may indicate that the officer was satisfied that the applicant did not have any disqualifying convictions.

Later, when the applicant later applied for permanent residence, he stated that he had been arrested for Drunk Driving on January 7, 1990. The applicant has provided evidence of having been convicted on January 8, 1990 of the misdemeanor offense of Driving Under the Influence.

According to counsel, neither the 1983 arrest nor the 1986 arrest resulted in convictions. The report from the State of California demonstrates the complainant in the 1986 Inflict Corporal Injury Spouse/Cohabitant incident refused prosecution. Additionally, the "no record" certification from the Municipal Court of California lends credence to the assertion that the 1983 Open Container charge did not result in a conviction.

Given the evidence furnished on appeal, and the lack of any evidence to the contrary, there is no basis upon which to conclude that the applicant was convicted of a felony or at least three misdemeanors. There is also no reason for concluding that he was ineligible for temporary residence, or committed an act which rendered him inadmissible. Thus, there is no basis for termination of temporary resident status due to criminality.

ORDER: The appeal is sustained.