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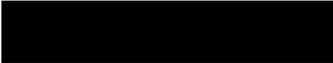
U.S. Citizenship
and Immigration
Services

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FILE:  Office: California Service Center Date: **SEP 27 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 is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not provided a criminal disposition. On appeal, the applicant states that he wishes to sustain his eligibility for legal residency.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 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).

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 record reveals the applicant was charged with Possession of Controlled Substance, Possession/Receiving Stolen Property and Under the Influence of PCP on August 2, 1984 in El Monte, California. The applicant was directed to provide the actual court record of this case, but failed to do so. The Federal Bureau of Investigation report regarding these charges shows the applicant was sentenced to confinement for 30 days, the imposition of sentence was suspended, and that he was granted 24 months probation. The report seems to indicate that the applicant was convicted of the two drug-related charges. Given the sentence, it is clear that he was convicted of *at least* one misdemeanor if not a felony.

On August 3, 1994, the applicant was charged with Unlicensed Driver, a misdemeanor. On January 7, 1997, he pled guilty to that charge. On that same date, he pled guilty to Driving With Suspended License, and Driving With .08% Blood Alcohol Content, stemming from charges filed on January 8, 1988. Thus, the applicant pled guilty to three misdemeanors on January 7, 1997, again in El Monte.

According to the transcript relating to the latter two offenses, he admitted to prior convictions for Drunk Driving on or around February 9, 1981 in East Los Angeles Judicial District and for Under Influence

Alcohol/Drug in Vehicle on or around June 9, 1983 in the Southeast Judicial District. Therefore, the applicant was convicted of at least six misdemeanor offenses in the United States, if not a felony or drug offense, and is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving 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 under the provisions of section 245A of the Act, *and is otherwise eligible for adjustment of status*. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

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