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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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, 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 points out that he is reformed, and that he became an active member of his church in 1984. He explains that his moral integrity is guided by religious standards. He stresses that he provides financial support and moral, civic and spiritual training to his five children.

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 the felony offense of Delivery of a Controlled Substance (Heroin) on March 13, 1978 in Chicago. The applicant has not challenged the fact of this conviction. There is no waiver available for a felony conviction. Because of this 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 heroin conviction renders the applicant inadmissible under this section. Pursuant to section 245A(d)(2)(B)(ii)(II) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(II), no waiver is permitted for a drug offense, except for a single offense of simple possession of 30 grams or less of marijuana.

Based on the notes of the officer of the Immigration and Naturalization Service who interviewed the applicant in 1988, and on the applicant's statements on appeal, it appears very likely that the applicant has been a reformed, productive, law-abiding member of society for many years. However, the conviction precludes approval of his application.

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