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U.S. Citizenship
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Services

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FILE:



Office: California Service Center

Date: JAN 12 2006

IN RE:

Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 adjustment from temporary to permanent resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The Director, California Service Center denied the application because the applicant had been convicted of four misdemeanors. On appeal, the applicant contends that some of his convictions do not relate to misdemeanors, because of the punishment incurred. He also points out that all convictions pertained to vehicular, not criminal, offenses.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(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).

The record reveals the applicant was convicted of Driving With License Suspended on January 8, 1991, September 9, 1991 (two counts) and April 20, 1992. This offense is a misdemeanor under the California Vehicle Code. Thus, the applicant was actually convicted of four misdemeanors.

The applicant asserts that, pursuant to the above definition of misdemeanor, the offense cannot be considered to be a misdemeanor because he received sentences of five days or less imprisonment. However, the number of days sentenced is not significant. What is important is that Driving With License Suspended is punishable by imprisonment in the county jail for a maximum of six months, pursuant to section 42002 of the California Vehicle Code. Therefore, it falls within the above definition of misdemeanor. The fact that the applicant was sentenced to less time is not relevant. Additionally, whether a misdemeanor appears in the state criminal code or vehicle code has no bearing on these proceedings.

The applicant was convicted of four misdemeanors. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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