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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, D.C. 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 14 2006  
XPW 91 019 00820

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent 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. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief  
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 denied the application because the applicant had been convicted of at least three misdemeanors in the United States, and he was therefore ineligible for adjustment from temporary to permanent resident status.

On appeal, the applicant asserts that he did not commit the offense of grand theft of vehicle on February 7, 1996. The applicant apologizes for his previous misdemeanor convictions and requests that his application be reconsidered as he has a family to support in the United States.

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).

At the time the applicant filed his Form I-698 application on October 22, 1990, he indicated that he had been arrested for various driving under the influence offenses.

The FBI report dated August 12, 2004 revealed that on February 7, 1996, the applicant was arrested by the Sheriff's Office in Norwalk, California for grand theft of vehicle/vessels, a violation of 487 PC, a felony. The FBI report also revealed that on May 12, 1999, the applicant was arrested by the Sheriff's Office in Norwalk for driving under the influence of alcohol, a violation of section 23152(a) VC, driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, and driving while license is suspended or revoke for driving under the influence, a violation of section 14601.2(a) VC, all misdemeanors. The applicant was convicted of driving under the influence and sentenced to serve time in jail. The remaining offenses were dismissed.

On September 25, 2004, and April 4, 2006, the director issued a Request for Evidence which informed that applicant that via a fingerprint analysis, the FBI revealed the applicant's arrests on February 7, 1996 and May 12, 1999. The applicant was requested to submit court dispositions for all arrests including the two noted above. The applicant was advised if the court dispositions were not available, a certified letter from the court must be obtained, and if no charges were filed, a letter from the arresting agency must be obtained. The applicant, in response, asserted, in part:

You are requesting court records for a charge against me on February 7, 1996. I have gone to Norwalk court and police department and they do not have any charges of any kind for me on this date. I know for a fact that I never had a grand theft charge because I never committed any such crime.

The applicant submitted court dispositions which revealed the following:

- On November 4, 1987, the applicant was arrested for driving under the influence of alcohol, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; driving while license is suspended or revoke for driving under the influence, a violation of section 14601.2(a) VC; and driving without a license, a violation of section 12500(a) VC, all misdemeanors. On January 11, 1988, the applicant was convicted of driving with .08 percent or more alcohol in the blood. The applicant was placed on summary probation for three years on condition his license would be suspended for 18 months. The remaining offenses were dismissed. The applicant subsequently violated his probation and on March 6, 1990, the applicant's probation was revoked and he was sentenced to serve 30 days in the county jail to be served consecutive to number two below. Case no. [REDACTED]
2. On January 1, 1990, the applicant was arrested for driving under the influence of alcohol, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; driving while license is suspended or revoke for driving under the influence, a violation of section 14601.2(a) VC; and driving without a license, a violation of section 12500(a) VC, all misdemeanors. On March 6, 1990, the applicant was convicted of driving with .08 percent or more alcohol in the blood. The applicant was placed on summary probation for five years on condition he served 120 days in the county jail and paid a fine. The remaining offenses were dismissed. Case no. [REDACTED]
  3. On January 15, 1995, the applicant was arrested for driving under the influence of alcohol, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; and driving while license is suspended or revoke for driving under the influence, a violation of section 14601.2(a) VC, all misdemeanors. On March 5, 1996, the applicant was convicted of driving with .08 percent or more alcohol in the blood. The applicant was placed on summary probation for five years on condition he served 360 days in the county jail and paid a fine. The remaining offenses were dismissed. The applicant subsequently violated his probation and on April 15, 1997, the applicant was sentenced to serve an additional 75 days in the county jail. On August 13, 1997, the applicant's probation was revoked and a warrant was issued. On May 14, 1999, the warrant was recalled and the applicant was remanded into custody. Case no. [REDACTED]
  4. On May 12, 1999, the applicant was arrested for driving under the influence of alcohol, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; and driving while license is suspended or revoke for driving under the influence, a violation of section 14601.2(a) VC, all misdemeanors. On June 2, 1999, the applicant was convicted of driving under the influence. The applicant was sentenced to serve 120 days in the county jail. The remaining offenses were dismissed. Case no. [REDACTED]

On appeal, the applicant asserts that the grand theft of vehicle charge did not relate to him. The FBI record, however, via a fingerprint analysis, revealed the applicant's arrest. The applicant was offered the opportunity to submit documentation from either the court or the arresting agency to dispute this charge; however, he failed to submit any documentation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for adjustment to permanent resident status because of his four misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available. The applicant is also ineligible because he failed to provide the requested documentation for his February 7, 1996 arrest necessary for the adjudication of the application.

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