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U.S. Citizenship
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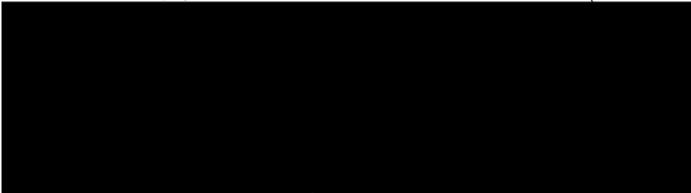
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
XNK 88 116 0110

Date: NOV 22 2006

IN RE: Applicant: [REDACTED]

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Western Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant was ineligible to adjust to temporary resident status and terminated his temporary residence pursuant to section 245A(b)(2)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(2)(A), because the applicant had failed to assist the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services of CIS) in providing requested court documents relating to his criminal history as required under 8 C.F.R. § 245a.3(g)(5).

On appeal, counsel asserts that the applicant was never convicted of any crime after his arrest in 1994. Counsel further contends that the applicant was not granted an extension to reply to the notice of intent to terminate. Counsel submits court documents in support of the appeal.

The issue to be determined in this proceeding is whether the applicant's temporary resident status should be terminated in light of the fact that he failed to provide requested court documents necessary to demonstrate that he is admissible.

The record contains a report from the Federal Bureau of Investigation (F.B.I.) that is dated January 21, 2004, which based upon fingerprint comparison reflects the following relating to the applicant's criminal history:

- An arrest on February 18, 1994 by the Norwalk, California Sheriff's Office for a felony violation of section 273.5 of the California Penal Code, Inflict Corporal Injury on Spouse/Cohabitant, under the name [REDACTED] and,
- An arrest on November 14, 2002 by the Riverside, California Sheriff's Office for a misdemeanor violation of section 23152(b) of the California Penal Code, Driving Under the Influence with a Blood Alcohol Count of 0.08% or Higher, under the name Sergio Vidona.

The record shows that the Service issued the notice of intent to terminate to the applicant on May 26, 2004, in which the applicant was granted thirty days to provide court documents to establish the disposition of the multiple criminal charges brought against him.

In response the applicant submitted a ten page Complaint Report from the County of Los Angeles Sheriff's Department that reflects the applicant was arrested for a felony violation of section 273.5 of the California Penal Code, Inflict Corporal Injury on Spouse/Cohabitant on February 18, 1994. However, the applicant failed to provide the requested court documents to show the disposition of any of the criminal charges cited above.

The record shows that counsel subsequently submitted a letter to CIS on June 28, 2004 in which she requested a sixty-day extension to allow the applicant to submit the requested court documents.

The director determined that the applicant had failed to provide requested court documents relating to his criminal history as required under 8 C.F.R. § 245a.3(g)(5), and terminated his temporary resident status on September 8, 2004.

On appeal, counsel contends that the applicant was not granted an extension to reply to the notice of intent to terminate. However, as noted above, counsel submitted a letter to CIS on June 28, 2004 in which she requested a sixty-day extension to allow the applicant to submit the requested court documents. The record shows that the director did not issue the notice of termination until September 8, 2004, seventy-two days after the date of counsel's request for a sixty-day extension. Therefore, any contention that the applicant was not granted sufficient time to submit the requested court documents is without merit.

Counsel submits computer printouts from the Superior Court of California, County of Riverside. These computer printouts reflect that the applicant was convicted of two separate misdemeanor offenses for a violation of section 23152(a), Driving Under the Influence of Alcohol or Drug, or Under the Combined Influence of Alcohol or Drug, of the California Vehicle Code, and section 23152(b), Driving Under the Influence of Alcohol with a Blood Alcohol Count of 0.08% or More by Weight, of the California Vehicle Code on January 16, 2003.

Counsel asserts that the applicant was never convicted of any crime after his arrest in 1994. In support of this assertion, counsel submits a letter from the Executive Officer/Clerk of the Superior Court of California for the County of Los Angeles that is dated June 28, 2004. The letter states that a review of court records in Los Angeles Superior Court, Whittier Courthouse for the years 1994 to the date the letter was executed revealed no case number or record on the plaintiff/defendant, [REDACTED]. However, the previously discussed F.B.I. report demonstrates that the applicant has used his own name, as well as the aliases [REDACTED]. This letter reflects only a search of court records in the County of Los Angeles Superior Court, Whittier Courthouse involving the name [REDACTED] and does not demonstrate any review of records associated with the aliases the applicant has utilized or search of records in other jurisdictions. Therefore, this letter cannot be considered as sufficient to establish the court disposition of the criminal charge brought against him when he was arrested for spousal assault on February 18, 1994.

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).

Declarations by an applicant that he or she has not had a criminal record are subject to a verification of facts by the Service or its successor CIS. The applicant must agree to fully

cooperate in the verification process. Failure to assist the Service or its successor 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).

As of the date of this decision, the applicant has failed to submit any court documents relating to the disposition of his arrest on February 18, 1994 by the Norwalk, California Sheriff's Office for a felony violation of section 273.5 of the California Penal Code, Inflict Corporal Injury on Spouse/Cohabitant. It is concluded the applicant has failed to provide documents to establish both his eligibility and admissibility as required pursuant to 8 C.F.R. § 245a.2(k)(5).

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. By not providing necessary evidence, the applicant has failed to establish his eligibility and admissibility under the provisions of section 245A of the Act. For this reason, the applicant's temporary resident status shall remain terminated.

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