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U.S. Citizenship
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FILE: [REDACTED]
XLA 88 008 04097

Office: CALIFORNIA SERVICE CENTER

Date: NOV 27 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: 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 "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of 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 terminated the applicant's temporary resident status because he determined that the applicant had been convicted of a felony in the United States.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii).

"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 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act).

On April 13, 1990, the Director, Western Service Center, received a California Department of Justice (DOJ) report dated March 16, 1990, which reflected the following:

1. On April 30, 1987, the applicant was arrested by the Los Angeles Police Department for violating section 11378.5 H&S, possession of phencyclidine for sale. On March 1, 1988, the applicant was convicted of violating section 11377(a) H&S, possession of controlled substance, a felony. The applicant was sentenced to serve 60 days in jail, ordered to pay a fine and placed on probation for three years. On August 7, 1989, probation was revoked and the applicant was sentenced to serve 16 months in prison. [REDACTED]
2. On January 26, 1988, the applicant was arrested by the Los Angeles Police Department for violating section 10851(a) VC, taking vehicle without owner's consent. On January 27, 1988, no charge was filed due to lack of probable cause.
3. On October 4, 1988, a warrant [REDACTED] was issued by the Los Angeles Police Department in regards to number one above.
4. On May 2, 1989, the applicant was arrested by the Los Angeles Police Department for violating section 11550 H&S, under the influence of a controlled substance. On June 26, 1989, the applicant was convicted of this misdemeanor offense. The applicant was sentenced to serve 135 days in jail and placed on probation for five years. [REDACTED]

On January 16, 1992, the director issued a Notice of Intent to Terminate, advising the applicant that he had been convicted of numbers one and four above. The applicant was advised that his temporary resident status would be terminated unless he provided sufficient evidence indicating that the convictions did not occur. The applicant, however, did not respond to the notice. Based on information contained in the California DOJ report, the director determined that the applicant was ineligible for the benefit being sought and terminated his temporary resident status on April 14, 1992.

On appeal, the applicant asserts, "I don't think I have such a criminal record to be terminated. I know I've cause myself (mentally, physically) damage. But I've cause none to society."

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests to establish that he was, in fact, convicted of the crimes listed in the California DOJ report. As such, the AAO cannot determine whether or not the applicant was convicted of the offenses mentioned above. Nevertheless, the burden of proof is upon the applicant to provide credible documentary evidence apart from his own statement. The applicant must agree to fully cooperate in the verification process. Failure to assist Citizenship and Immigration Services 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).

It is concluded the applicant has failed to provide court documents necessary for the adjudication of the application.

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, he has failed to establish he is admissible under the provisions of section 245A of the Act.

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