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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 28 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. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center. It is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he determined that the applicant had been convicted of a felony in the United States.

On appeal the applicant provides a detailed account which lead to his arrest for theft. The applicant asserts, "a woman attorney from Legal Aid told me to plead guilty because if it went to court I could go to jail for 5 years."

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 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).

The applicant's Form I-687 application indicated that he had been arrested for shoplifting in 1984 and being drunk in public.

The FBI record, via a fingerprint check, revealed that on May 6, 1986, the applicant was arrested by the Sheriff's Office in San Diego, California for armed robbery, robbery, and assault with a deadly weapon on a person. The charge of armed robbery was rejected by the district attorney's office on May 8, 1986. The charges of robbery and assault with a deadly weapon were dismissed on May 22, 1986 and July 11, 1986, respectively. On August 8, 1986, the applicant was found guilty of two counts of grand theft on person, a violation of section 487 PC. The applicant was sentenced to serve 142 days in jail, ordered to pay a fine and placed on probation for three years.

On July 29, 1992, the director issued a Notice of Intent to Deny, advising the applicant to submit the court dispositions for all arrests including the above noted arrests. The applicant, in response, provided a statement indicating that he was unable to obtain the requested court dispositions "because of money factor...." The applicant requested an extension of time in order to obtain the court dispositions. The applicant asserted:

Regarding [sic] the violation in your letter I did not know I had pled guilty to a felony my court appointed lawyer advised that because I was a[sic] illegal allian [sic] it would be easier to plead to anything the court said because I was illegal.

Because a violation of 487 PC can be handled as either a misdemeanor or felony, and the record does not contain the actual court disposition for the applicant's May 6, 1986 arrest, the AAO cannot determine whether the applicant was convicted of a felony or a misdemeanor. Nevertheless, the burden of proof is upon the applicant to provide credible documentary evidence apart from his own statement. 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 the 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 Immigration and Nationality Act (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.