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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

[Redacted]  
XPO 88 205 4069

Office: CALIFORNIA SERVICE CENTER

Date: FEB 01 2007

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Temporary Resident Status under 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. 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 Director, California Service Center denied the application for temporary resident status based on the applicant's failure to appear for his schedule legalization interview. Pursuant to the applicant's appeal, the director reopened the matter and subsequently denied the application on different grounds. The applicant's appeal remains in effect before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the applicant's Form I-687 because the applicant had been convicted of three misdemeanors.

The applicant has not responded to this latest ground for the director's denial of the Form I-687.

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).

The record reveals that the applicant has been convicted of the following misdemeanor offenses:

1. On January 4, 1991, the applicant was convicted of forgery in violation of Section 470 PC, a misdemeanor for which the applicant was sentenced to 10 days in jail. Case No. [REDACTED]
2. On or about December 14, 2000, the applicant was convicted of DWI (driving while intoxicated), a misdemeanor for which the applicant was sentenced to two months in prison. Prison Court Docket No. [REDACTED]
3. On or about May 24, 2001, the applicant was convicted of DWI, a misdemeanor for which the applicant was sentenced to one year in prison. Prison Court Docket No. [REDACTED]

Additionally, though not noted in the director's decision, the record further shows that on December 28, 1990, a warrant was issued for the applicant's arrested for altering/forging/falsifying a driver's license in violation of Section 470A PC. The applicant was released pursuant to a bench warrant arrest on January 2, 1991.

On March 24, 2003, the director issued a notice of intent to deny (NOID) informing the applicant of the three criminal convictions that would serve as grounds for denying the Form I-687 if the applicant failed to overcome the adverse information. As the NOID was mailed to an old address, the director mailed it again on November 10, 2004 to the applicant's latest address of record. Although the applicant was allowed 30 days in which to respond to the NOID, the record contains no evidence that a response was submitted.<sup>1</sup>

Accordingly, on April 20, 2005, the director denied the Form I-687 application citing the applicant's three misdemeanors as the ultimate grounds for denial. Although the applicant's original appeal, Form I-694 remains in effect, it does not address the grounds cited in the director's latest denial. There is no evidence on record showing any submissions by the applicant since his filing of the appeal on May 5, 1992.

Thus, based on the applicant's three misdemeanor convictions, he is ineligible for temporary resident status. 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.

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<sup>1</sup> The record shows that the latest NOID was returned to the service center as undeliverable. There is no evidence that the applicant's address, which is currently in the record, has been updated.