



U.S. Citizenship
and Immigration
Services

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FEB 05 2007

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

XUA 88 512 3247

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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Western Service Center terminated the applicant's temporary resident status. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant was convicted of a felony and was inadmissible to the United States.

On appeal, the applicant references the conviction record he submitted below.

Section 245A(b)(2) of the Act states, in pertinent part:

Termination of temporary residence. – The [Secretary of Homeland Security] shall provide for termination of temporary resident status granted an alien under subsection (a) –

* * *

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States[.]

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1) also states, in pertinent part:

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time in accordance with section 245A(b)(2) of the Act. . . . The temporary resident status may be terminated upon the occurrence [sic] of any of the following:

* * *

(ii) The alien commits an act which renders him or her inadmissible as an immigrant, unless a waiver is secured pursuant to § 245a.2(k)(2).

(iii) The alien is convicted of any felony, or three or more misdemeanors[.]

Section 212(a)(2)(A)(i) of the Act renders inadmissible:

any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

* * *

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance [.]

The regulation at 8 C.F.R. § 245a.1(p) defines a felony as, in pertinent part, “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[.]”

The record in this case shows that the applicant was granted lawful temporary residence on May 5, 1989. On October 9, 1990, the applicant submitted a Form I-698, application to adjust status from temporary to permanent resident. In response to the director's request in that case, the applicant submitted a certified copy of his conviction record. The conviction record is an order issued by the Superior Court of California, Los Angeles County, Case Number [REDACTED] on December 21, 1987, which shows that the applicant was convicted of selling marijuana, in violation of section 11360(a) of the California Health and Safety Code. The applicant was sentenced to three years of probation and 59 days of imprisonment. At the time of the applicant's conviction, the sale of marijuana was punishable by "imprisonment in the state prison for a period of two, three or four years." Cal. Health & Safety Code Ann. § 11360(a) (West 1991). Because the applicant's offense was committed in the United States and was punishable by imprisonment for a term of more than one year, the applicant was convicted of a felony. The applicant's felony conviction necessitates the termination of his temporary resident status pursuant to section 245A(b)(2)(B)(ii) of the Act.

The applicant's offense also renders him inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act because he was convicted of violating a state law relating to a controlled substance. The applicant's inadmissibility is another ground for the termination of his temporary resident status pursuant to section 245A(b)(2)(B)(i) of the Act. Section 245A(d)(2)(B)(ii)(I) of the Act prohibits the waiver of inadmissibility due to a controlled substance conviction.

The applicant has been convicted of a felony offense relating to a controlled substance, which necessitates the termination of his temporary residency pursuant to section 245A(b)(2)(B) of the Act. On appeal, the applicant references his conviction record, but provides no further reasons for his appeal and submits no additional relevant evidence. Consequently, the appeal will be dismissed.

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