



U.S. Citizenship
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Services

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FILE: [REDACTED]
XSR-88510-3270

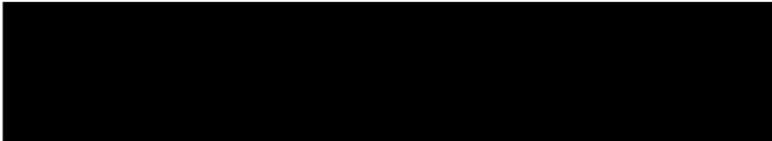
Office: California Service Center

Date: FEB 14 2001

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:



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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 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 status because the applicant had been convicted of three misdemeanors in the United States, and was thus ineligible for temporary residence (legalization). On appeal, counsel pointed out that none of the convictions related to crimes involving moral turpitude, and asserted that the applicant is, therefore, eligible for a waiver of inadmissibility. She submitted a waiver application, but it was later returned to her by the director. She also noted that the convictions took place quite some time ago, and opined that it would be unfair to now hold the convictions against the applicant.

Temporary resident status may be terminated if the alien is convicted of a felony, or three or more misdemeanors. *See* 8 C.F.R. § 245a.2(u)(1)(iii). Also, such status may be terminated if the alien was ineligible for temporary residence. 8 C.F.R. § 245a.(2)(u)(1)(i). Finally, status may be terminated if the alien commits an act which renders him inadmissible as an immigrant. 8 C.F.R. § 245a.2(u)(1)(ii).

"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 was arrested for *Driving with a Suspended License*, section 14601.1 of the California Vehicle Code (CVC), on January 30, 1988, and was convicted on February 1, 1988, docket number [REDACTED]. He was arrested for the same offense on August 4, 1989, and was convicted on August 7, 1989, docket number [REDACTED]. He was also arrested for *Driving under the Influence*, section 23152(b) of the CVC, on September 10, 1987, and convicted on September 17, 1987, docket number [REDACTED]. Counsel has not contested the fact of these convictions.

The director noted the applicant was arrested for *Failure to Appear*, section 40508(a) of the CVC, and for *Unlicensed Driver*, section 12500(a) of the CVC, on August 11, 1988. Through the submission of additional documentation, counsel has established that the applicant was not convicted of those offenses. However, the applicant remains convicted of the three misdemeanors shown above.

Counsel explains that the applicant has not been convicted of a crime involving moral turpitude. She reasons that, as convictions relating to moral turpitude may not be waived, convictions not relating to crimes involving moral turpitude may be waived.

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Section 212(a)(2)(A)(i)(I) of the Act states that any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude, is inadmissible. Counsel correctly states that section 212(a)(2)(A)(i)(I) does not render the applicant inadmissible because his convictions do not relate to crimes involving moral turpitude. However, the basis for the director's decision was not that the applicant is *inadmissible* for having been convicted of a crime involving moral turpitude, but rather that he is *ineligible* for temporary residence due to having been convicted of three misdemeanors. In addition to the grounds of inadmissibility, some of which may be waived, Congress set forth basic requirements for eligibility for legalization that may not be waived. As stated in section 245A(a)(4)(B) of the Act, the alien must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Nowhere is it stated in the statute or regulations that an alien ineligible for having been convicted of three misdemeanors may apply for a waiver of his ineligibility. Counsel's contention that *ineligibility* may be waived pursuant to a waiver provision regarding grounds of *inadmissibility* is misplaced.

The applicant was convicted of three misdemeanors committed in the United States. Although the convictions took place more than 17 years ago, there is no statute of limitations concerning the applicability of convictions, and the applicant remains ineligible for temporary residence.

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