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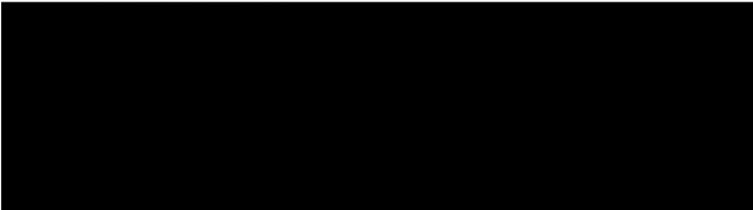
Office: LOS ANGELES

Date: JUL 24 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment of status from temporary to permanent resident was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to provide the final court dispositions of all arrests since his arrival in the United States within the 90-day period granted to the applicant to respond to the request for additional evidence.

On appeal, counsel asserts that Fed Ex was scheduled to deliver his response to the request for additional evidence on July 7, 2006, but the actual delivery did not occur until July 10, 2006, after the expiration of the 90-day response period specified in the notice of intent to deny. Counsel submits court documents relating to the applicant's arrests.

An alien is ineligible for temporary residence if he has been convicted of a felony, or three or more misdemeanors committed in the United States. *See* 8 C.F.R. § 245a.2(c)(1). Also, an alien is inadmissible to the United States if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. *See* Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

"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 was arrested in Norwalk, California, on January 15, 1989, and charged with inflicting corporal injury on a spouse or cohabitant. The record contains a criminal history printout from the State of California Department of Justice, Bureau of Criminal Identification, indicating that the proceedings were suspended and the applicant was placed in diversion on April 5, 1989. The criminal history record further indicates that the charges of battery in violation of section 242 of the California Penal Code and inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) of the California Penal Code were both dismissed on October 31 1990. [REDACTED]

The record further reveals that the applicant was arrested on October 16, 1993, in Norwalk, California, and charged with inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) of the California Penal Code, a misdemeanor. The applicant's criminal history printout from the California Department of Justice indicates that the applicant was convicted of this

charge on October 19, 1993. The court sentenced the applicant to 20 days imprisonment in the county jail, with imposition of sentence suspended, and placed him on probation for a period of 24 months. [REDACTED]

Finally, the record reveals that the applicant was arrested in San Bernardino, California, on July 21, 1997, and charged with hit and run with property damage in violation of section 20002(a) of the California Vehicle Code. The applicant's California criminal history record does not reveal the final court disposition of this arrest.

The applicant appeared for his adjustment interview on April 6, 2006. At the conclusion of his interview the applicant was handed a Form I-72 requesting that he submit original or certified court dispositions of all arrests since his arrival in the United States. The applicant was granted 30 days to respond to the notice.

In a letter dated June 6, 2006, counsel requested additional time, until July 8, 2006, to obtain the requested court disposition documents. The applicant was granted until July 8, 2006, to submit the requested court disposition documents.

On July 11, 2006, the district director denied the application because the applicant failed to submit the final court disposition documents of all arrests since his arrival in the United States.

On appeal, counsel asserts that his response to the request for additional evidence was mailed via Fed Ex Overnight Mail on July 6, 2006, but Fed Ex failed to deliver the applicant's response by July 8, 2006. Counsel stated that Fed Ex did not deliver the applicant's response to the request until July 10, 2006. Counsel submitted photocopies of Fed Ex tracking documents indicating that a package was mailed via Fed Ex Overnight Mail on July 6, 2006, but was not delivered until July 10, 2006.

Counsel's explanation for the applicant's failure to respond to the request by the specified deadline is reasonable and will be accepted. The documents submitted in response to the request for additional evidence will be addressed in this decision.

On appeal, counsel submitted a photocopy of a document from the Superior Court of California, County of San Bernardino, reflecting the following charges: driving on a suspended or revoked license where the defendant's driver's license was suspended or revoked because the person had been convicted of a violation of section 23152 or 23153 of the California Vehicle Code in violation of section 14601.2(a) of the California Vehicle Code, a misdemeanor; failure to provide proof of financial responsibility in violation of section 16028(a) of the California Vehicle Code, an infraction; and, failure to secure a minor child passenger in a seat belt in violation of section 27360.5(a) of the California Vehicle Code, an infraction. The court document that indicates that the court dismissed all charges on August 3, 2006. [REDACTED]

The charges listed in the court document dated August 3, 2006, are different from the charge relating to the 1997 arrest listed on the applicant's FBI fingerprint results report and his California criminal history printout. The applicant's FBI fingerprint results report and his California criminal history printout indicate the applicant was arrested on July 21, 1997, and charged with hit and run with property damage. The Supreme Court of California document dated August 3, 2006, indicates that the applicant was charged with driving with a suspended or revoked driver's license

when the license had been suspended or revoked after prior conviction on the charge of driving under the influence of alcohol (DUI) in violation of section 23152 or 23153 of the California Vehicle Code. The court document dated August 3, 2006, does not reflect the date of arrest or any other information, such as date of arrest, case number, or docket number, to establish that this document relates to the July 21, 1997, arrest listed on the applicant's fingerprint results report and his California criminal history printout.

Although the August 3, 2006 court document indicates that the charge of driving with a suspended or revoked license with a prior DUI conviction was dismissed, it also indicates that the applicant has a previous misdemeanor conviction on the charge of driving under the influence of alcohol that is not reflected on the FBI fingerprint results report or his California criminal history document. It is noted that the applicant indicated on his Form I-687, Application for Status as a Temporary Resident, that he had a 1987 conviction on the charge of driving under the influence of alcohol. The record does not contain any information or documentation relating to this 1987 misdemeanor conviction.

It appears that the applicant has two misdemeanor convictions and may have additional misdemeanor convictions. Furthermore, as previously stated, the August 3, 2006 document from the Supreme Court of California, County of San Bernardino, does not contain any data such as a date of arrest or case number to clearly connect it to the applicant's July 21, 1997, arrest on the charge of hit and run with property damage.

Declarations by an applicant pertinent to his criminal record are subject to a verification of facts by the Service. The applicant must cooperate fully in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a negative determination. *See* 8 C.F.R. § 245a.2(k)(5). In this case, the applicant has failed to provide a document necessary for the adjudication of the application, thereby preventing the Service from determining that he was not convicted of three misdemeanors.

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