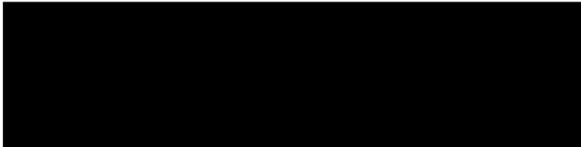




U.S. Citizenship
and Immigration
Services

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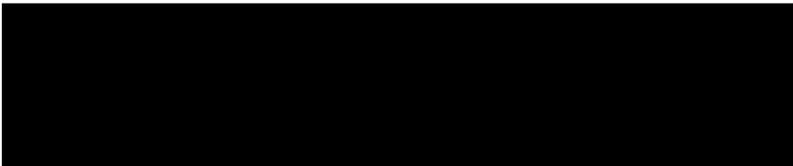
Office: TEXAS SERVICE CENTER

Date: JUL 26 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application because he determined that the applicant had been convicted of three misdemeanors.

On appeal, counsel asserts that the director erroneously found that the applicant was convicted of a misdemeanor in 2002. In support of this assertion, counsel refers to the applicant's court record indicating that his 2002 conviction was not punishable by imprisonment and therefore not a "misdemeanor" as determined by the director.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C). The regulations provide relevant definitions at 8 C.F.R. § 245a.

"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 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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The Texas Penal Code (Texas P.C.) provides that "[a]n individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500." Texas P.C. § 12.23. A class C misdemeanor is not punishable by confinement.

In the present matter, certified court records from the District Court of Harris County, Houston, Texas, reveal that the applicant was convicted of the following offenses:

1. On May 19, 1992, the applicant was convicted of "theft \$20-\$200" [statute number not provided], a class B misdemeanor, docket # [REDACTED]. He was sentenced to six days in jail.
2. On August 14, 1998, the applicant was convicted of "indecent exposure" [statute section not provided], a class B misdemeanor, docket # [REDACTED]. He was sentenced to eight days in jail.

3. On October 7, 2002, the applicant was convicted of “failure to identify oneself to a peace officer” [statute section not provided], a class C misdemeanor, docket # [REDACTED] He was fined \$200.

Regarding the 2002 conviction, counsel correctly noted that the director’s decision mistakenly referred to a conviction for the offense of “evading arrest or detention” rather than the amended charge of “failure to identify oneself to a peace officer” as confirmed by court records. As the 2002 conviction is for a class C misdemeanor under the Texas Penal Code, and, as such, is not punishable by imprisonment, the conviction is not a misdemeanor as defined at 8 C.F.R. § 245a.1(o), *supra*.

The AAO concludes that the applicant has been convicted of two misdemeanors. He is therefore not ineligible for adjustment to permanent resident status under section 245A(b)(1)(C) of the Act. The denial of permanent residence is withdrawn. The application for adjustment of status from lawful temporary to permanent resident is approved contingent upon required criminal and background checks.

ORDER: The appeal is sustained.