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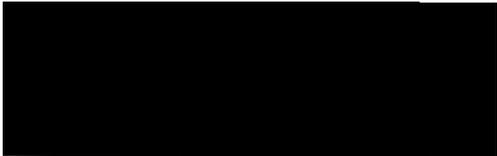


U.S. Citizenship
and Immigration
Services

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MAY 10 2007



FILE:



XLA 88 516 1143

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



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:



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.

11 3 1
[Signature]

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Western Service Center, terminated the applicant's temporary resident status. The Chief, Legalization Appeals Unit, sustained the appeal and reinstated the applicant's temporary resident status. The Director, California Service Center, subsequently terminated the applicant's status again, and that action is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The Director, California Service Center terminated the applicant's status because the applicant had been convicted of transporting or selling a narcotic controlled substance in violation of section 11352 of the California Health and Safety Code, a felony.

On appeal, counsel stated that she would seek post-conviction relief. Counsel indicated that she intended to obtain the applicant's criminal court file to determine whether a motion to vacate was warranted. To date, counsel has not submitted a brief or additional evidence to overcome the basis for termination of the applicant's temporary resident status. Therefore, the record will be considered complete.

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).

An alien is inadmissible 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. Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act. The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

The applicant's 2004 Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in Los Angeles, California, on May 24, 1999, and charged with transporting or selling a narcotic controlled substance in violation of section 11352(a) of the California Health and Safety Code, a felony. The report further indicated that the applicant was

convicted of this charge in the Superior Court of California, County of Los Angeles, and that she was granted probation for a period of 36 months.

On November 1, 2004, the director informed the applicant of his intent to terminate her temporary resident status because of the information contained in the fingerprint results report. The director granted the applicant thirty days to submit the final court disposition of this arrest or to submit evidence to overcome the information contained in the fingerprint results report. The record contains a postal return receipt signed by the applicant on November 18, 2004, acknowledging receipt of the Notice of Intent to Terminate; however, the applicant failed to respond to the notice.

The director terminated the applicant's temporary resident status because she failed to submit the final court disposition of her arrest or to submit evidence to overcome the arrest information and conviction information contained in the fingerprint results report. The director informed the applicant that her appeal was still in effect and granted her thirty days to submit additional evidence to supplement her appeal.

In response, counsel for the applicant stated that she intended to obtain the applicant's criminal court record to determine whether a motion to vacate was warranted. Counsel requested additional time to submit a brief and additional evidence. To date, the applicant has not submitted a brief or any additional evidence to overcome the basis for termination of the applicant's temporary resident status.

Declarations by an applicant pertinent to her 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). The applicant has failed to provide the final court disposition of her arrest. The applicant failed to provide a document necessary for the adjudication of the application, thereby preventing Citizenship and Immigration Services from determining that she was not convicted of a drug-related felony offense.

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