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U.S. Citizenship
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FILE:

MSC 06 262 12071

Office: LOS ANGELES

Date: JAN 23 2008

IN RE:

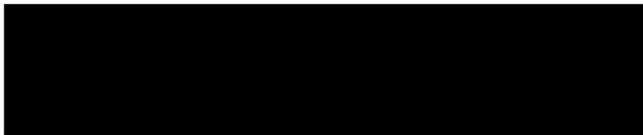
Applicant:



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, Chief
Administrative Appeals Office

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

The director denied the application because he found the applicant to be statutorily ineligible for permanent resident status based on his three misdemeanor convictions.

On appeal, counsel asserts that the director's findings were erroneous and submits an appellate brief explaining the basis for his argument.

An applicant for adjustment from temporary to permanent resident status must establish: 1) that he or she is admissible to the United States as an immigrant (with certain exceptions) and 2) that he or she has not been convicted of any felony or three or more misdemeanors committed in the United States. 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 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 convicted of the following offenses in the State of California:

1. On January 21, 1999, the applicant was charged with driving under the influence of alcohol, a misdemeanor in violation of section 23152(a) of the California Vehicle Code and driving with a blood alcohol content of .08% or greater, a misdemeanor in violation of section 23152(b) of the California Vehicle Code. On March 11, 1999, the applicant pled guilty to and was convicted of both offenses. He was placed on probation for five years and ordered to pay fines totaling \$1,535. (Municipal Court of West Covina, Los Angeles County, California Docket No. [REDACTED]).
2. On July 5, 2006, the applicant was convicted of driving with a blood alcohol content of .08% or greater, a misdemeanor in violation of section 23152(b) of the California Vehicle Code. The applicant was placed on probation for three years and ordered to pay a fines totaling \$1,495. (Superior Court of California, San Bernardino County Case No. [REDACTED]).

On appeal, counsel cites section 237(a)(2)(A)(ii) of the Act¹ in support of his assertion that the offenses in No. 1 above amount to a single conviction because they arose out of the same incident. While section 237(a)(2)(A)(ii) of the Act provides that an alien convicted of two or more crimes involving moral turpitude arising out of a single scheme of criminal misconduct is not deportable, that section is inapplicable to these proceedings, as the applicant has not been deemed deportable due to convictions for

¹ Counsel erroneously cites to this provision as "INA § 241(a)(2)(A)(ii) of the Act."

crimes involving moral turpitude.² Rather, the issue is whether the applicant has been convicted of three or more misdemeanors committed in the United States pursuant to section 245A(b)(1)(C)(ii) of the Act. Based on the record documenting the applicant's three misdemeanor convictions, the director properly found the applicant ineligible for adjustment to permanent resident status.

The applicant stands convicted of three misdemeanors. He is therefore ineligible for adjustment to permanent resident status pursuant to section 245A(b)(1)(C)(ii) of the Act. No waiver of such ineligibility is available. See 8 C.F.R. § 245a.3(c)(1).

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

² An applicant for adjustment to permanent residency must establish admissibility and the pertinent provision is section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), which provides that:

Any alien convicted of 2 or more offenses (other than purely political offenses), *regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude*, for which the aggregate sentences to confinement were 5 years or more is inadmissible [emphasis added].

As the applicant here was not sentenced to confinement, he is not inadmissible under this provision and has established his admissibility, as required by section 245A(b)(1)(C)(i) of the Act.