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U.S. Citizenship  
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: JUL 10 2008

XPW 91 039 0208

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

cc 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant failed to respond to or comply with the request for additional evidence. More specifically, the director determined that the affidavit of support submitted by the applicant was incomplete or incorrectly filled out and that the sponsor of the affidavit failed to provide the tax returns for the years noted in the Form I-72.

On appeal, the applicant has submitted sufficient documentation to overcome the above noted deficiency. However, in reviewing the record in its entirety, the AAO observed that the director erred in stating that the applicant's response to the previously issued Form I-72 included a final court disposition. Rather, a review of the documentation included in the applicant's response showed that the applicant submitted a criminal history printout from the Municipal Court of West Los Angeles Courthouse, dated September 13, 2007, which shows that the applicant was charged with the following offenses on July 6, 1987: 1) driving while under the influence, a misdemeanor, in violation of section 23152(a) of the California Vehicle Code; 2) driving with more than .08% blood alcohol level, a misdemeanor, in violation of section 23152(b) of the California Vehicle Code; and 3) driving while unlicensed, a misdemeanor, in violation of section 12500(a) of the California Vehicle Code.

Accordingly, in a letter dated February 28, 2008, the AAO informed the applicant that a final court disposition was needed in order to make a final determination as to the applicant's eligibility for adjustment from temporary to permanent resident status. Although the AAO acknowledged that the court printout shows that the case record has been destroyed, the applicant was provided with information on how to go about obtaining the required final court dispositions for the offenses cited above through the California Department of Justice (DOJ).

The regulations at 8 C.F.R. § 245a.3(g)(5) state the following:

Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by [Citizenship and Immigration Services formerly] the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist [CIS] in verifying information necessary for the adjudication of the application may result in a denial of the application.

The applicant was informed that failure to satisfy the provisions of 8 C.F.R. § 245a.3(g)(5) may result in the denial of his application. As such, the AAO allowed the applicant an additional 15 days in which to respond to the request for further documentation.

In response, counsel submitted a letter dated March 12, 2008 in which she claimed that she contacted the California DOJ in an effort to obtain the requested documentation. She asked for an extension of the 15-day time period, stating that it would take eight weeks to received the proper documentation. One week later, counsel submitted a letter dated March 19, 2008 in which she stated that the requested final court dispositions

were part of court records that have been destroyed. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, counsel has provided no evidence to establish that she contacted the California DOJ or that they were unable to provide the requested documentation. Instead, counsel has resubmitted a computer printout that is already part of the record and that fails to show the final court dispositions for three misdemeanor charges. Contrary to counsel's claim, the court's destruction of a particular record does not necessarily lead to the DOJ's destruction of the same record, particularly in light of the DOJ's practice of saving records on a computer database. In the present matter, counsel has failed to provide final word from the DOJ with regard to the requested documents and instead provides merely her own claim that the requested documents are unavailable. However, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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; 8 U.S.C. § 1255a(b)(1)(C).

Based on the applicant's failure to assist CIS by providing the requested documents, the AAO concludes that the applicant has failed to comply with 8 C.F.R. § 245a.3(g)(5) and has failed to establish that he has not been convicted of a felony or three misdemeanors. Therefore, the applicant has failed to establish that he is eligible to adjust his status from temporary to permanent resident.

**ORDER:** The appeal is dismissed.