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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: OKLAHOMA CITY

Date:

JUL 10 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to National Benefits Center. 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, Oklahoma City, and 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 was rendered statutorily ineligible based on his conviction of at least three misdemeanor offenses.

On appeal, the applicant asserts that a number of the convictions listed in the director's denial were traffic violations and claims that he intends to submit further information and/or documentation in support of the appeal within 30 days. It is noted that the appeal was received by Citizenship and Immigration Services on December 27, 2007. As more than 30 days have passed since the date the appeal was filed, the AAO will make its determination based on the record as presently constituted.

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).

"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:

1. On October 3, 1994, the applicant was convicted of assault causing bodily injury, a misdemeanor in the State of Texas. The applicant was sentenced to six months in jail. (Case No. 0511245D).
2. On June 25, 1998, the applicant was convicted of failure to comply with required comprehensive liability insurance law, a misdemeanor, in violation of section 47-7-606 of the Oklahoma Motor Vehicles Code. (No. TRI-1997-16881).¹
3. On September 25, 2000, the applicant was convicted of assault and battery, a criminal misdemeanor, in violation of Title 21 of the Oklahoma Crimes and Punishments Code. (No. CM-2000-2242).

¹ The record also show that the applicant was convicted of impaired driving, which was amended from the original charge of driving while under the influence of alcohol, a misdemeanor, in violation of section 47-11-902(a) of the Oklahoma Motor Vehicles Code. However, neither the section of the code nor the classification of the amended charge was included in the court document.

4. On July 19, 2001, the applicant was convicted of driving under the influence of alcohol, a misdemeanor, in violation of section 47-11-902(a) of the Oklahoma Motor Vehicles Code, and driving without a driver's license, also a misdemeanor, in violation of section 47-6-303(a) of the Oklahoma Motor Vehicles Code. (No. TRI-2001-1448).

On appeal, the applicant addresses the offenses listed in Nos. 2, 3 and 4 above, claiming that the offenses in Nos. 2 and 4 were traffic violations and further stating that no one was injured as a result of the offense in No. 3. However, the applicant's statement is irrelevant in light of the fact that both offenses were classified as misdemeanors by sections of the Oklahoma statutory code. Furthermore, the statutory provisions of both offenses fit the regulatory definition of "misdemeanor."

As such, the applicant stands convicted of five misdemeanors and is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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