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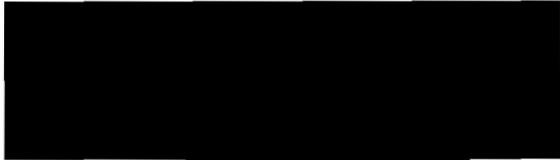
U.S. Department of Homeland Security  
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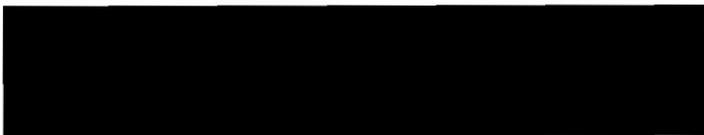


FILE: [REDACTED] Office: FRESNO Date: **JUL 14 2008**  
MSC-05-221-10797

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to 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 termination of temporary resident status by the Director, Fresno District Office, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the applicant for temporary resident status because the applicant had been convicted of three misdemeanors in the United States, and was thus ineligible for the benefit sought. On appeal, counsel noted that all of the misdemeanor convictions occurred more than ten years ago and that the applicant has been rehabilitated and remained reformed for thirteen years.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

"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).

The applicant was arrested for *Disorderly Conduct PC 647(F)* on seven separate occasions, each resulting in conviction. The dates of arrest are as follows: May 8, 1989, January 12, 1990, March 30, 1990, June 18, 1990, April 3, 1990, June 29, 1992, May 10, 1993. Counsel has not contested the fact of these convictions.

Counsel explains that the applicant has not been convicted of a crime involving moral turpitude. He further asserts that since the convictions are more than 10 years old, the applicant is still admissible to the United States.

Counsel's argument is without merit. The basis for the director's decision was not that the applicant is *inadmissible* for having been convicted of multiple misdemeanors, but rather that he is *ineligible* for temporary residence due to having been convicted of three misdemeanors. In addition to the grounds of inadmissibility, some of which may be waived, Congress set forth basic requirements for eligibility for legalization that may not be waived. As stated in section 245A(a)(4)(B) of the Act, the alien must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Nowhere is it stated in the statute or regulations that an alien ineligible for having been convicted of three misdemeanors may apply for a waiver of his ineligibility. Counsel's contention that *ineligibility* may be waived pursuant to a waiver provision regarding grounds of *inadmissibility* is misplaced.

The applicant was convicted of three misdemeanors committed in the United States. Although the convictions took place more than 10 years ago, there is no statute of limitations concerning the applicability of convictions, and the applicant remains ineligible for temporary residence.

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