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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:

XPW 89 360 1423

Office: LOS ANGELES

Date: **MAR 31 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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. 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.

On appeal, the applicant submits a Form I-134 and a printout from the California Federal Bureau of Investigations (FBI) showing dispositions of three of the applicant's arrests.

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 (CIS), 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.

In the present matter, the record shows that the applicant was interviewed by a CIS officer on August 30, 2007. The interview resulted in the issuance of Form I-72, request for additional documentation. Specifically, the applicant was instructed to submit: 1) an affidavit of support with supporting documents, such as W-2 wage and tax statements or tax returns, for the last three years; 2) two color immigration photographs; and 3) final court dispositions for the applicant's arrests. The applicant was allowed 30 days in which to respond to this request.

While the applicant did not provide the requested documents, the record shows that he responded with a letter dated October 17, 2007 in which he asked for additional time in which to comply with CIS's request. Based on the date of the director's denial, November 30, 2007, it appears that the applicant's request was granted. However, no further documentation was provided prior to the denial. Accordingly, the director denied the application based on the applicant's failure to comply with the request for documentation.

The record shows that the applicant was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the application was re-adjudicated. The applicant failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Based on the applicant's failure to assist CIS by timely providing the requested documents, the AAO concludes that the applicant has failed to comply with 8 C.F.R. § 245a.3(g)(5). Therefore, the applicant has failed to establish that he is eligible to adjust his status from temporary to permanent resident.

Additionally, 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).

While not discussed in the director's decision, the record shows that the applicant has been convicted of three misdemeanor convictions as follows:

1. On September 5, 1990, the applicant was convicted of reckless driving in violation of section 23103 of the California Vehicle Code. The applicant was placed on probation for 24 months and ordered to pay fines totaling \$594. (Case # [REDACTED])
2. On November 7, 1995, the applicant was convicted of driving with a blood alcohol content of .08% or greater in violation of section 23152(b) of the California Vehicle Code. The applicant was placed on probation for 60 months and ordered to pay fines totaling \$1,315. (Case # [REDACTED])
3. On September 7, 2000, the applicant was convicted of driving with a suspended or revoked license in violation of section 14601.5(a) of the California Vehicle Code. The applicant was placed on probation for 36 months and ordered to pay fines totaling \$1,044. (Case # [REDACTED])

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). In light of the three misdemeanor convictions cited above, the applicant is ineligible for permanent resident status on this basis as well.

In summary, the applicant is ineligible for permanent resident status for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.