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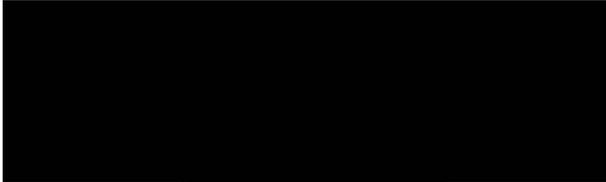
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1



FILE: [REDACTED]
XPW 93 142 0220

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 31 2008**

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: SELF-REPRESENTED

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 Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant's criminal convictions rendered him statutorily ineligible for adjustment to permanent resident status.

On appeal, counsel concedes that he committed a felony offense, but asserts that is eligible for a waiver of his inadmissibility and maintains that he is eligible for adjustment to permanent resident status.

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).

"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).

In the present matter, the record shows that the applicant has been convicted of the following offenses:

1. On November 18, 1988, the applicant was convicted of driving with a suspended or revoked license, a misdemeanor, in violation of section 14601.2(a) of the California Vehicle Code. (Case No. [REDACTED])
2. On March 24, 1989, the applicant was convicted of inflicting corporal punishment of a spouse or cohabitant, a misdemeanor, in violation of section 273.5(a) of the California Penal Code. The applicant's jail sentence was suspended and he was placed on probation for 36 months. (Case No. [REDACTED])
3. On October 19, 1989, the applicant was convicted of felony driving under the influence with three priors in violation of section [REDACTED] of the California Vehicle Code and child endangerment, a felony, in violation of section 273(a)(1) of the California Penal Code. On December 1, 1989, the applicant was sentenced to a total of two years and eight months in

jail. The record shows that the applicant was credited for 90 days for time spent in custody. (Case No. [REDACTED])

4. On January 17, 1991, the applicant was convicted of felony drunk driving in violation of section [REDACTED] of the California Vehicle Code and willful child cruelty, a felony, in violation of section 273a(1) of the California Penal Code. The applicant was sentenced to 32 months in prison.
5. On November 22, 1991, the applicant was convicted of felony drunk driving in violation of section [REDACTED] of the California Vehicle Code. (Case No. [REDACTED])
6. On May 4, 1998, in the State of Washington, the applicant was convicted of attempted robbery in the first degree, a felony, and assault in the second degree, also a felony. The applicant was sentenced to a total of 96 months, or nine years, in jail. (Cause No. [REDACTED])

On appeal, the applicant admits to having committed one felony and claims that his record is now clear as he has served time for this offense. However, contrary to the applicant's understanding, the fact that he served time for a criminal offense does not remove from his record that conviction, or any of the others that were discussed above. In the present matter, the record clearly establishes that the applicant has been convicted of multiple felony offenses, which render him statutorily ineligible for adjustment from temporary to permanent resident status. No waiver of such ineligibility is available.

As a final note, an alien whose temporary resident status has been terminated under 8 C.F.R. § 245a.2(u) is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5). In the present matter, the record shows that the applicant's temporary resident status was terminated on November 26, 1993 as a result of his felony convictions. There is no indication that the applicant filed an appeal from the adverse decision regarding his temporary resident status. As the applicant is not a temporary resident, he is ineligible for adjustment from temporary to permanent resident status for this additional reason.

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