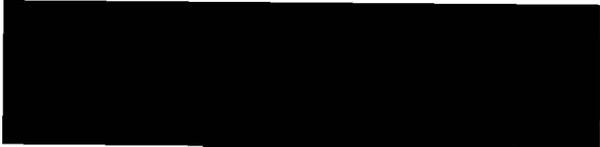




U.S. Citizenship
and Immigration
Services

PUBLIC COPY
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

L1



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 08 2008**

XPW-89-320-1025

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 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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application for adjustment from temporary to permanent resident status on January 6, 1993. That decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he determined that “[t]he potential exists that you may be ineligible as an alien who has been convicted of at least one felony and/or at least three misdemeanors.” The decision stated that the applicant had been convicted of violating section 653k of the California Penal Code, “Possession of Switchblade Knife,” on May 6, 1992; and had been arrested on April 6, 1989 in Santa Ana, California, for violating section 459 of the California Penal Code, “Burglary (Felony).” The director added that the applicant had stated on his Form I-687, Application for Status as a Temporary Resident, dated June 11, 1987, and on the Form I-698, dated June 28, 1989, that he had been arrested for being drunk in public. He noted that “no evidence has been received to indicate that the charges against you are in error or that you were cleared of these charges,” concluding that the applicant had failed to assist the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services or CIS) in verifying information necessary for the adjudication of his application.

The applicant timely filed Form I-694, Notice of Appeal, on January 21, 1993, with copies of court documents to demonstrate “that past offences have been corrected.” Included with his Form I-694 were (1) a Probation Order from the County of Orange, California, confirming that he had been convicted of a violation of section 653k on May 6, 1992; (2) a certified letter from the Municipal Court of the Central Orange County Judicial District in Santa Ana, California, dated January 12, 1993, stating that the court had completed a criminal record search for the year 1989 for the applicant, noting his name and date of birth and the violation date of April 6, 1989, and stating that he had no record of arrest within the jurisdiction of that court during that period; and (3) a copy of the Misdemeanor Docket record of the Municipal Court, North Orange County Judicial District, California, showing that the applicant pled guilty to a violation of section 10.28.010 of the Municipal Code on December 2, 1988. A prior certified letter from that Municipal Court had been received by the Service, on October 13, 1992, indicating that the applicant had no arrest record in that jurisdiction from 1989 through 1992.

The record also contains prior submissions by the applicant in response to requests for evidence from the Service for final court dispositions and in response to the Service’s Notice of Intent to Terminate (NOIT) issued on October 2, 1992. The applicant’s prior submissions include a letter from the California Department of Justice, dated November 30, 1990, in response to the applicant’s request for a criminal record check. The letter states that “[a] search of your fingerprints in Bureau [of Criminal Identification] files was identified with an existing California criminal history record. A copy of that record has been enclosed.” The enclosed “Criminal History Transcript” reported prior arrests in the State of California, noting that charges had not been filed (a 1980 arrest for gambling) or had been dismissed (a 1982 charge for murder), and included the April 6, 1989 arrest for burglary but did not indicate any court proceedings resulting from the arrest. In 1991, apparently in response to a Service Request for Evidence dated April 29, 1991, the applicant enclosed copies of some of the above noted documents and a cover note in which he stated that he had already sent the requested information and would send more if needed and asked that the Service be more specific if the enclosed documents were not the right ones. In response to the NOIT, which referred to the applicant’s 1982 arrest for murder and his burglary arrest in 1989, the applicant sent another letter to the

Service, dated December 11, 1992, stating that “what was requested from [him] have been satisfied [sic]” and that the “U.S. Court House stated that they will forward records of my past offenses to your Office directly.” The applicant also submitted a court transcript showing that the 1982 murder charge had been dismissed. He also provided an original print-out from the California Department of Motor Vehicles (DMV), dated October 9, 1992, showing that the applicant had no record of traffic violations with the DMV.

The issues before the AAO are whether the applicant’s criminal history renders him ineligible to adjust to lawful permanent resident status under section 245A of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a; and whether he fully cooperated in assisting to verify his record.

Ineligibility Based on Criminal History

An applicant who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Act; 8 U.S.C. § 1255a(b)(1)(C). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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 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 actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

Where a criminal record is at issue, “[t]he applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.” 8 C.F.R. § 245a.3(g)(5).

The Applicant’s Criminal Record

In the present matter, the administrative record shows that the applicant did cooperate fully in providing court records and arrest records from the relevant jurisdictions. The record also indicates that he tried to clarify with the Service exactly what documents were needed and that he made multiple requests and submitted numerous documents in response to the Service’s requests for evidence, Notice of Intent to Terminate temporary residence and final decision to deny his application to adjust his status to permanent resident. The Service consistently requested that the applicant submit dispositions of all arrests; explained that court dispositions must be obtained from the courts where the hearings were held; and required that the applicant explain fully any convictions or confinements. The record reflects that the applicant responded appropriately to the Service’s requests. On more than one occasion the applicant requested the California

Department of Justice and the relevant courts to provide their records. Their responses confirmed that no record of convictions – or of charges being filed in court – existed for the recorded arrest for burglary in 1989 or as a result of the applicant’s admitted arrest for drunkenness prior to June 11, 1987.

However, the record reveals that the applicant has been convicted of the following offenses:

1. On December 2, 1988, the applicant was convicted of a violation of section 10.28.010 of the **Pittsburg (California) Municipal Code**, for violation of the “Bicycle parking zones” ordinance, an infraction (case number [REDACTED]). (The court record shows that the applicant pled guilty and was fined \$50. Under the California Vehicle Code, a person convicted of an infraction under the code shall be punished by a fine not exceeding \$100. Section 42001 of the California Vehicle Code).
2. On May 6, 1992, the applicant was convicted of a violation of section 653k of the California Penal Code, “Possession of Switchblade Knife,” a misdemeanor (case number [REDACTED]). Imposition of sentence was suspended, and the applicant was placed on summary probation for three years and fined \$75.
3. On July 24, 2000, the applicant pled guilty to and was convicted of violation of section 647(f) of the California Penal Code, “Public Intoxication – Alcohol,” a misdemeanor (case number [REDACTED]). Imposition of sentence was suspended, and the applicant was placed on informal probation for three years and fined \$300.
4. On June 28, 2002, the applicant pled guilty to and was convicted of violation of section 12020(A) of the California Penal Code, “Possession of a Deadly Weapon,” a misdemeanor (case number [REDACTED]). The crime is classified as a misdemeanor according to the court docket report, and “punishable by imprisonment in a county jail not exceeding one year or in the state prison” under the statute. Imposition of sentence was suspended, and the applicant was placed on informal probation for three years.

Conclusion

As noted above, an applicant who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Act. The applicant’s convictions, outlined above, include three misdemeanors committed in the United States. He is therefore not eligible for adjustment to permanent resident status under section 245A of the Act.

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