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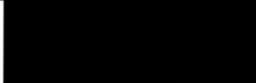
U.S. Citizenship  
and Immigration  
Services

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FILE:



XLA-88-517-3234

Office: CALIFORNIA SERVICE CENTER

Date: NOV 05 2008

IN RE:

Applicant:



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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant has three misdemeanor convictions.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). "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 record before the AAO reveals that the applicant was convicted of *Driving Under the Influence with Death or Injury* on October 21, 1986 (Docket # [REDACTED]). He was also convicted twice for *Failure to Appear* on August 17, 1987 (Docket # [REDACTED]) and October 20, 1988 (Docket # [REDACTED]). These offenses all took place in California, and are misdemeanors under the California Vehicle Code.

The applicant represents himself on appeal. He asserts that he has diligently searched the court records but was unable to locate any record of the two most recent convictions. He also claims that two of the misdemeanor offenses "arise from a common conviction" and should not be considered separate events, "were not due to the willful act of the appellant", and ultimately, no punishment of incarceration was imposed.

The AAO finds these arguments to be without merit. The applicant's convictions fit the definition of "misdemeanor" noted above in that they are punishable by imprisonment for a term of one year or less. That the applicant may not have served any actual jail time is legally irrelevant for immigration purposes. Furthermore, the two convictions for *failure to appear* are two separate incidents in that both occurred almost one year apart. Finally, the applicant's contention that he cannot find court records for two of the convictions is insufficient to meet his burden of proof regarding eligibility for temporary residence status. See section 245A(b)(1)(C) of the Act; 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5).

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