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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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OCT 22 2008

FILE: [REDACTED]
XPW 91 040 01356

Office: CALIFORNIA SERVICE CENTER

Date:

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 National Benefits Center. 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 Field Office Director, Los Angeles, 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 failed to provide the requested documentation regarding his criminal record to establish that he was statutorily eligible for adjustment to permanent resident status.

On appeal, the applicant indicates that he attempted to obtain the required documentation and submits all that he claims he was able to gather. He reiterates that he has been residing continuously in the United States for the requisite time period.

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).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act.

In the present matter, the record reveals that on December 31, 1982, the applicant was arrested for transportation/sale of marijuana, a felony, in violation of section 11360(a) of the California Health and Safety Code. The final disposition for this offense is unknown. The record also shows that on June 1, 1983, the applicant was convicted of disorderly conduct: prostitution, a misdemeanor, in violation of section 647(b) of the California Penal Code.

On November 7, 2006, the applicant was scheduled to appear for an interview with a legalization officer. The notice, Form G-56, instructed the applicant to bring with him the final court disposition regarding his 1982 drug-related offense. The record contains a copy of an application filed by the applicant seeking the release of arrest information, traffic collision and/or incident information.

On August 15, 2007, the director issued a notice of intent to deny (NOID), notifying the applicant that he failed to provide the final court disposition for the offense previously cited. Although the applicant was allowed 30 days in which to respond to the director's NOID, he failed to do so.

Accordingly, on October 11, 2007, the director issued a notice of denial, finding that the applicant failed to establish that he is eligible and admissible, elements which are necessary in order to adjust status to that of a permanent resident alien.

On appeal, the applicant asserts that he has not been convicted of three or more misdemeanor offenses and refers to the police report he provided regarding his 1982 drug-related arrest. The applicant further claims that he was unable to locate any court documents regarding that arrest despite having contacted the Superior Court in Los Angeles.

It is noted, however, that declarations by an applicant that he has not had a criminal record are subject to a verification of facts by Citizenship and Immigration Services (CIS). 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. 8 C.F.R. § 245a.2(k)(5).

In the present matter, the record shows that the applicant was charged with a drug-related felony offense, which would have made the applicant inadmissible and ineligible for adjustment to permanent resident status. The AAO cannot conclude simply based on the applicant's own claim that his prior arrest did not result in a conviction. In fact, even if the offense only resulted in a misdemeanor conviction, depending on the specific facts of the court's determination and the facts of the matter, the applicant may still be inadmissible by virtue of having been convicted of a drug-related offense, regardless of its classification. Whatever the case may be, the AAO cannot affirmatively find the applicant admissible and eligible for the immigration benefit sought without a final court disposition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

It is concluded the applicant has failed to provide documents necessary for the adjudication of the application. Therefore, he is ineligible for permanent residence in the legalization program.

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