

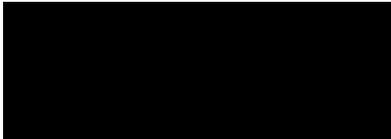
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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 23 2005**

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Western Service Center, and is before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application because the applicant failed to provide dispositions relating to criminal charges lodged against him.

On appeal, counsel provides a letter from the Department of Justice, State of California indicating the criminal history of the applicant according to the files of that bureau. He also provides a certification of "no record" from the Municipal Court of California, County of Los Angeles, Los Angeles Judicial District.

An alien who has been convicted of a felony or three or more misdemeanors in the United States, or who is inadmissible to the United States as an immigrant, is ineligible for permanent residence. 8 C.F.R. § 245a.3(c).

When the applicant was interviewed for temporary residence on September 8, 1988, he indicated to the interviewing officer that he had been arrested for Carrying an Open Container in 1983, and for another offense involving his common-law wife in 1986. There is no indication that the officer who interviewed the applicant required him to indicate whether he had actually been convicted. That officer, however, did recommend that the application be granted, which may indicate that the officer was satisfied that the applicant did not have any disqualifying convictions.

Later, when the applicant later applied for permanent residence, he stated that he had been arrested for Drunk Driving on January 7, 1990. The applicant has provided evidence of having been convicted on January 8, 1990 of the misdemeanor offense of Driving Under the Influence.

According to counsel, neither the 1983 arrest nor the 1986 arrest resulted in convictions. The report from the State of California demonstrates the complainant in the 1986 Inflict Corporal Injury Spouse/Cohabitant incident refused prosecution. Additionally, the "no record" certification from the Municipal Court of California lends credence to the assertion that the 1983 Open Container charge did not result in a conviction.

Given the evidence furnished on appeal, and the lack of any evidence to the contrary, there is no basis upon which to conclude that the applicant was convicted of a felony or at least three misdemeanors. There is also no reason for concluding that he committed an act that rendered him inadmissible. Thus, there is no known basis for denial of permanent resident status due to criminality.

ORDER: The appeal is sustained. The director shall now have the applicant interviewed for permanent residence, and shall have the adjudication completed.