

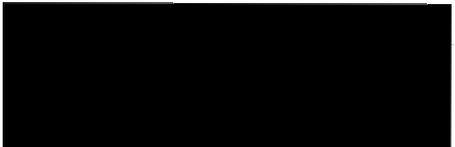


U.S. Citizenship
and Immigration
Services

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FILE:

XHL 88 072 2011

Office: California Service Center

Date: AUG 14 2006

IN RE:

Applicant:



APPLICATION:

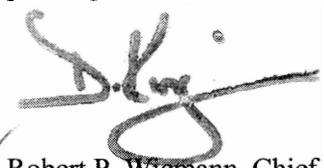
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 temporary resident status was denied by the Director, Western Service Center. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because of the applicant's criminal record. On appeal, the applicant states that he was not convicted of a felony or three or more misdemeanors.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(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).

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, 8 U.S.C. § 1182(a)(2)(A)(i)(II). Inadmissibility under this section may be waived only if the conviction relates to a single offense of simple possession of 30 grams or less of marijuana. See Section 245A(d)(2)(b)(ii)(II) of the Act, 8 U.S.C. § 1255a(d)(2)(b)(ii)(II).

The record reveals the applicant was convicted of the following:

On August 16, 1986, the Honolulu Police Department arrested the applicant and charged him with Driving While Under the Influence of Intoxicating Liquor, in violation of section 291-0004 of the Hawaii Revised Statutes (HRS); DWOL-Licensing, HRS § 286-0102; Op Vehicle W/O No-Fault Ins., HRS § 294-0008 (a violation); and Certificate of Registration/Ownership, HRS § 286-0047. On August 18, 1986, the Honolulu District Court convicted the applicant of all four charges. Court case # B311-315.

On February 18, 1989, the Honolulu Police Department arrested the applicant and charged him with DWOL-Licensing, HRS § 286-0102. On September 7, 1994, he was convicted of the charge.

On February 18, 1989, the Honolulu Police Department arrested the applicant and charged him with DWOL-Licensing, HRS § 286-0102. On September 7, 1994, the applicant was convicted of the charge. Report [REDACTED]

On April 1, 1989, the Honolulu Police Department arrested the applicant for Driving Under the Influence of Intoxicating Liquor, HRS § 291-0004. On July 26, 1996, he was convicted of the charge. Report [REDACTED]

On April 1, 1989, the Honolulu Police Department arrested the applicant for Driving Under the Influence of Intoxicating Liquor, HRS § 291-0004. On November 18, 1994, the applicant was convicted of the charge. Court case [REDACTED]

On April 1, 1989, the Honolulu Police Department arrested the applicant for DWOL-Licensing, HRS § 286-0102. On November 18, 1994; he was convicted of the charge. Court case [REDACTED]

On June 5, 1993, the Honolulu Police Department arrested the applicant and charged him with Driving while under the Influence of Intoxicating Liquor, HRS § 291-0004. On April 6, 1994, the applicant was convicted.

On October 15, 1993, the Honolulu Police Department arrested the applicant for Driving Under the Influence of Intoxicating Liquor, HRS § 291-0004. On November 18, 1994, the applicant was convicted of the charge.

On December 9, 1993, the Honolulu Police Department arrested the applicant for Abuse of Family/Household Member, HRS § 709-906-85. On May 31, 1994, the applicant was found guilty of Assault 3, HRS § section 707-0712 by the Honolulu Family Court. Court case # [REDACTED]

On July 29, 1994, the Honolulu Police Department arrested the applicant and charged him with Criminal Contempt of Court, HRS § 710-1077. On September 7, 1994, the applicant was convicted of the charge. Report [REDACTED]

On July 29, 1994, the Honolulu Police Department arrested the applicant and charged him with Criminal Contempt of Court, HRS § 710-1077. On November 18, 1994, the applicant was found guilty. Report [REDACTED]

On July 29, 1994, the Honolulu Police Department arrested the applicant and charged him with Criminal Contempt of Court, HRS § 710-1077. On November 18, 1994, the applicant was found guilty. Report [REDACTED]

On April 6, 1995, the Honolulu Police Department arrested the applicant for DWOL-Licensing, HRS § 286-0102. On July 26, 1996, the applicant was convicted of the charge.

On December 11, 1995, the applicant was convicted of Assault 3, HRS § 707-0712. Court case [REDACTED]

On April 6, 1995, the Honolulu Police Department arrested the applicant for DWOL-Licensing, HRS § 286-0102. On July 26, 1996, the applicant was convicted. Report [REDACTED]

The Honolulu Police Department arrested the applicant on December 5, 1998 and charged him with Criminal Littering, HRS § 708-0829, and Promoting a Dangerous Drug in the 3rd Degree, HRS § 712-1243. On April 24, 2000, the 1st Circuit Court of Hawaii convicted the applicant on both charges. Court case [REDACTED]

The applicant was also arrested for Sell or Transport Marijuana in Los Angeles on April 8, 1984 and on May 3, 1984, and for Assault with Deadly Weapon on May 25, 1983, also in California. However, those cases were not filed. Finally, he was arrested for Rape on September 18, 1982 in Hawaii, but the charges were evidently dismissed and the arrest was expunged under section 831-3.2 of the Hawaii Revised Statutes. There is evidence in the record that the applicant has additional recent arrests for which the final disposition is unknown.

The applicant was convicted of at least 18 misdemeanor offenses and of a felony¹ offense in the United States, and is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States. Furthermore, he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a narcotics offense. As stated above, no waiver is available.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is *admissible* to the United States under the provisions of section 245A of the Act, *and is otherwise eligible for adjustment of status*. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

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

¹ The applicant was convicted in Hawaii of Promoting a Dangerous Drug, section 712-1243, class C felony, on April 24, 2000. [REDACTED]