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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: JAN 10 2006

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed 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 application for adjustment from temporary to permanent resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application because the applicant had seemingly been convicted of three misdemeanors.

On appeal, counsel states that the applicant "has not been served with copies of court deposition sheets from the INS regarding the alleged criminal convictions. Respondent should have been served with the court docket sheets and afforded an opportunity to rebut the allegation or charges." Counsel further states that she does not concede the charges, and points out that it seems the charges arose from a single scheme and should therefore be considered less than three misdemeanors.

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 director, *citing the same case number for each conviction*, listed them as follows:

1. Driving Under the Influence of Alcohol, March 8, 1989;
2. Driving With Revoked or Suspended Privilege, March 8, 1989;
3. Driving Under the Influence of Alcohol, August 1, 1989.

A careful review of the documentation regarding the last offense reveals it was a violation of probation for the earlier convictions, rather than a new conviction. A document dated July 7, 1989 states the case is called for payment of fine, and failure of the applicant to show proof of completion of an alcoholic program. It indicates that a bench warrant is ordered and issued. This clearly refers to a prior conviction. The heading on the August 1, 1989 document is "Additional Municipal Court Proceedings." This document indicates that the warrant is recalled, the applicant is found to be in violation of probation, and probation is terminated and then reinstated. A separate August 1, 1989 document then orders the applicant to be imprisoned for a term of 68 days.

Because the applicant was only convicted of two misdemeanors, the basis for denial has been overcome, and the appeal may be sustained. The application for adjustment to permanent residence shall now be fully adjudicated. In addition, the director's termination of the applicant's temporary resident status, also based on the premise that the applicant had been convicted of three misdemeanors, shall be withdrawn.

**ORDER:** The appeal is sustained.