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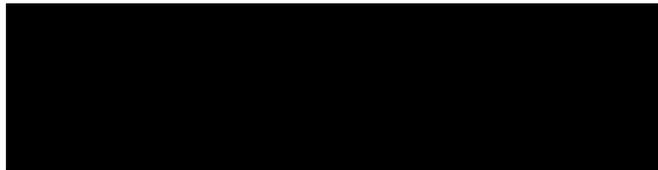
Office: LOS ANGELES

Date:

MAR 30 2007

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. 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 adjustment of status from temporary to permanent resident was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to provide the final court dispositions of all arrests since his arrival in the United States.

An applicant for adjustment of status from temporary to permanent resident must establish entry continuous residence in the United States since he or she was granted temporary resident status, is admissible to the United States under the provision of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.3(b).

An alien is ineligible for adjustment of status from temporary to permanent resident if he or she has been convicted of a felony, or three or more misdemeanors committed in the United States. *See* 8 C.F.R. § 245a.3(g)(3)(i). Also, an alien is inadmissible to the United States if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he or she admits having committed such crime, or if he or she admits committing an act which constitutes the essential elements of such crime. *See* Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

"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).

Declarations by an applicant that he or she has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.3(g)(5).

The applicant's 2005 Federal Bureau of Investigation (FBI) fingerprint results revealed the following arrests:

1. On May 24, 1991, the applicant was arrested in San Bernardino, California, and charged with one count of driving under the influence of alcohol causing injury in violation of section 23152(a) of the California Vehicle Code, a misdemeanor, and one count under the influence of alcohol with a blood alcohol content of 0.10% or greater

with injury in violation of section 23153(b) of the California Vehicle Code, a misdemeanor.

2. On February 16, 1994, the applicant was arrested in Pomona, California, under the name [REDACTED], and charged with soliciting prostitution in violation of section 647(b) of the California Penal Code, a misdemeanor.
3. On February 26, 1994, the applicant was arrested in San Bernardino, California, and charged with driving under the influence of alcohol with injury in violation of section 23153(a) of the California Vehicle Code, driving under the influence of alcohol with a blood alcohol content of 0.10% or greater with injury in violation of section 23153(b) of the California Vehicle Code. [REDACTED] The applicant was also charged with resisting arrest in violation of section 148 of the California Penal Code. [REDACTED]

On June 6, 2006, the applicant appeared for his adjustment interview. At the conclusion of his interview, the applicant was issued a Form I-72 requesting that he provide certified final court dispositions for all arrests since his arrival in the United States.

The applicant, in response, submitted a document from the Municipal Court of Pomona Courthouse Judicial District, County of Los Angeles, State of California, indicating that a bench warrant issued in connection with the applicant's arrest in Los Angeles, California, on January 23, 1986, on the charge of possession of under one ounce of marijuana in violation of section 11357(b) of the California Health and Safety Code, a misdemeanor, was dismissed in the furtherance of justice pursuant to section 1385 of the California Penal Code. [REDACTED]

The applicant also submitted a document dated June 6, 2006, from the Superior Court of California, County of San Bernardino, indicating that a criminal record search was conducted under the name [REDACTED] was conducted. The report states that Case Number [REDACTED] was purged on April 9, 1989 and Case Number [REDACTED] was purged on October 9, 1992.

The director determined that the applicant had failed to provide the final court dispositions of all arrests since his arrival in the United States and denied the application on July 10, 2006.

On appeal, counsel for the applicant states that the applicant has fully complied with the request for the court dispositions of all arrests since the applicant's arrival in the United States. Counsel asserts that the applicant tried to furnish a copy of his criminal record from the State of California Department of Justice at his adjustment interview, but the interviewing officer inspected the record and returned it to the applicant. Counsel submits a photocopy of a criminal history transcript from the California Department of Justice, Bureau of Criminal Identification. This is the document counsel asserts was not accepted by the interviewing officer.

The criminal history transcript indicates that the applicant was arrested in Pomona, California, on January 23, 1986, for possession of marijuana for sale in violation of section 11359 of the California

Health and Safety Code, but the applicant was released from custody because there was insufficient evidence to file criminal charges against him. The criminal history transcript also lists the arrests detailed in Nos. 1, 2, and 3 above, but it does not provide any information regarding the final court dispositions of these charges.

The criminal record search from the Superior Court of California, East District – Pomona Court North indicates that no criminal record was found for [REDACTED] date of birth July 15, 1961. However, the applicant's criminal record was discovered through an FBI fingerprint search. FBI records are regulated by law and furnished for official use only. It is the position of Citizenship and Immigration Services (CIS) that an FBI fingerprint search provides a more thorough account of an applicant's criminal background than local record searches conducted by name and date of birth only.

Furthermore, the applicant requested that a criminal record search be conducted for the period from January 1995 to February 3, 2005. The arrests detailed in Nos. 1 through 3 above occurred between 1991 and 1994. This search does not relate to the dates of arrest detailed in Nos. 1 through 3 above. Moreover, the applicant requested a record search under the name [REDACTED]” The FBI fingerprint results report indicates that the applicant was arrested in Pomona, California, on February 16, 1994, under the name “[REDACTED]” not “[REDACTED]” Since the applicant was not arrested under his true name, it is not surprising that this name search did not reveal a criminal record. For these reasons, this record search document is insufficient to establish that the applicant has no misdemeanor or felony convictions in the Superior Court of California, East District Pomona Court.

The criminal record search from the Superior Court of California, County of San Bernardino, indicates that criminal record Number [REDACTED] was purged on April 9, 1989 and criminal record Number [REDACTED] was purged on October 9, 1992. However, just because two of the applicant's criminal records have been destroyed does not mean the applicant was not convicted. Further, the fact that a record was purged is not an indication that the charge was dismissed or that a conviction was vacated on its merits. The burden is on the applicant to provide *affirmative evidence* that the charge has been dismissed. As of this date, the applicant has failed to submit the final court dispositions for Nos. 1, 2, and 3 above.

Contrary to the assertions of counsel, the applicant has failed, both in response to the request for additional evidence and again on appeal, to provide the final court dispositions of the arrests detailed in Nos. 1 through 3 above. The applicant has failed to provide documentation necessary for the adjudication of the application, thereby preventing CIS from determining her admissibility to the United States. 8 C.F.R. § 245a.3(g)(5). Therefore, the appeal must be dismissed.

It is noted that the record contains a printout of the applicant's driving record from the California Department of Motor Vehicles dated January 27, 1988. This document reflects the following misdemeanor convictions:

- The applicant was convicted on October 17, 1986, of driving under the influence of alcohol in violation of section 23152(a) of the California Vehicle Code, a misdemeanor. (Date of Arrest: August 4, 1986; Case Number [REDACTED])
- The applicant was convicted on September 10, 1987, of violating a written promise to correct or failing to deliver proof of correction of violation, a violation of section 40616 of the California Vehicle Code, a misdemeanor. (Date of Offense: November 28, 1986; Case Number [REDACTED])
- On October 25 1986, the applicant was convicted of failure to appear in violation of section 40508(a) of the California Vehicle Code, a misdemeanor. (Case Number [REDACTED])

The applicant's California DMV record establishes that the applicant has been convicted of three misdemeanors. The applicant is also ineligible for adjustment of status from temporary to permanent resident because of his record of three misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1).

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