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U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: California Service Center

Date: FEB 18 2004

IN RE: Applicant: [Redacted]

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 PETITIONER: Self-represented

INSTRUCTIONS:

Attached is the decision rendered on your appeal. 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, the Service Center will contact you. 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 termination of temporary resident status by the Director, California Service Center, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant failed to provide requested court dispositions and other requested documents pertinent to his criminal history.

On appeal, the applicant claims that he does not know why his status was terminated and requests clarification of his status and what he needs to do in order to be granted temporary residence.

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).

The record reveals that on November 16, 1993, the applicant was convicted of a violation of 243(b) PC, battery on a peace officer, a misdemeanor.

The record also reveals that at the time of his interview, the applicant admitted that he had been arrested in 1982, 1983 and 1987 for drunk driving.

In a Notice of Intent to Terminate issued on March 25, 1991, the director noted the offenses listed above and requested that the applicant submit final court dispositions for his offenses. The applicant failed to respond to the notice. The director concluded the applicant had failed to comply with his request and terminated the applicant's temporary resident status.

On appeal, the applicant states that he does not know why his petition has not been approved. The applicant claims that he first applied for legalization in 1987, and later applied for amnesty under the LULAC lawsuit. The applicant asserts that he has met all requirements. However, this proceeding concerns the applicant's temporary resident status application under section 245A of the Immigration and Nationality Act and does not relate to LULAC proceedings. Furthermore, contrary to the applicant's claim, he was sent, and apparently received, a complete copy of his legalization file. The file contains documents that describe in detail why his temporary resident status was terminated. Moreover, the AAO provided the applicant with copies of the director's notices, subsequent to his appeal, informing him of the basis and decision of the director to terminate his status.

The applicant must agree to fully cooperate in the verification process. Failure to assist Citizenship and Immigration Services (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).

It is concluded the applicant has failed to provide documents necessary for the adjudication of the application. He has not established that the arrests did not culminate in convictions.

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.

[REDACTED]

Page 3

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