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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

JUL 21 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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 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, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director based the termination on the applicant's criminal record. On appeal, the applicant provides documentation regarding the criminal case, and a transcript of the sentencing hearing. He indicates the case resulted in diversion.

The status of an alien lawfully admitted for temporary residence under section 245A of the Act may be terminated if he is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 245a.2(u)(1)(iii). It may also be terminated if the alien commits an act that makes him inadmissible to the United States as an immigrant. See Section 245A(b)(2)(B) of the Act.

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, formerly section 212(a)(23) of the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) 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).

The record reveals diversion was terminated, and the applicant pled no contest on September 6, 1991 to Possession of a Controlled Substance, a felony as set forth in section 11350 of the California Health and Safety Code. The consequences of his plea were explained to him, and he was advised that the plea would be treated the same as a guilty plea.

On appeal, the applicant explains the circumstances surrounding his arrest, and asserts the police officers planted the drugs on him. However, this is not the proper forum to put forth such a charge, and it will not be considered. This review is limited to the applicant's eligibility under the Immigration and Nationality Act. In this matter, the applicant has failed to establish that his plea does not constitute a conviction.

Within the legalization program, no waiver is available to an alien convicted of a felony or three misdemeanors committed in the United States. Furthermore, no waiver is available to an alien inadmissible under section 212(a)(2)(C) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. See section 245A(d)(2)(B)(ii) of the Act.

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