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

U.S. Citizenship and Immigration Services

L1

[redacted]

FILE: [redacted] Office: California Service Center Date: NOV 10 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 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

PUBLIC COPY

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The director terminated the applicant's status because the applicant had evidently failed to provide criminal dispositions, thereby preventing the director from determining that the applicant was eligible.

On appeal, the applicant pointed out that the termination notice did not explain in detail why his status was terminated. He explained that he had not received the notice of intent to terminate. The director then sent the applicant a copy of the case-specific notice of intent to terminate. The applicant responded by providing the requested criminal dispositions.

Temporary resident status may be terminated if the alien is convicted of a felony, or three or more misdemeanors. 8 C.F.R. § 245a.2(u)(1)(iii).

"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 applicant was convicted of Driving Under the Influence of Alcohol .10% or More, and Unlicensed Driver, on July 26, 1987. He was also convicted of Driving Under the Influence on November 2, 1982. In that proceeding it was confirmed that he had a prior conviction for that offense on October 27, 1980. These misdemeanor offenses occurred in California.

While the applicant mentioned in another appeal concerning a denial of permanent residence that he only had two convictions, such is not the case. The records clearly set forth the above four convictions.

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.

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