U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: California Service Center Date: NOV 1 0 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status 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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Western Service Center, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because of the applicant's criminal record. On appeal, the applicant indicates that he believes the criminal record, at least in one case, relates to a different individual.

An alien is ineligible for permanent resident status if he was convicted of a felony, or three or more misdemeanors committed in the United States. 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 director indicated in a notice of intent to terminate temporary residence that the applicant had been arrested for Driving Under the Influence on May 23, 1989, Driving With a Suspended or Revoked License on February 6, 1989, and Failure to Appear on February 22, 1989. This information came from a State of California Department of Motor Vehicles "K-4" printout provided by the applicant. The director also pointed out that the applicant had indicated on his application for permanent residence that he had been arrested for burglary on May 21, 1989. The director requested that the applicant provide the dispositions of these offences.

In response, the applicant stated that the director had not met his burden of proof because he had not provided copies of the arrest documents.

The director then terminated the applicant's temporary resident status, and denied this application for permanent residence, pointing out that the information regarding the arrests came from documents the applicant had already furnished. The director further pointed out that the applicant had earlier stated that he had been convicted of burglary, and was sentenced to six months confinement.

In the record is a transcript of 1987 vehicular misdemeanor proceedings against The applicant has not acknowledged using that name, and the director has not accused the applicant of having been known by that name. Furthermore, the director has not referred to any 1987 charges. It is not

known why this transcript appears in the record, and the director may wish to check and see if it was misfiled.

The applicant provides a copy of a *1985* felony docket for case number 42349, which relates to two other individuals, and He points out that this is the docket number cited by the director regarding the May 23, *1989* Failure to Appear charge, and maintains that the document proves it was not he who was convicted. However, it is not clear at all that the same docket number would not be used again in a different year for a different case. The applicant cannot be said to have provided a disposition for the May 23, 1989 Failure to Appear charge.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a negative determination. *See* 8 C.F.R. § 245a.3(g)(5).

It is concluded that the applicant has failed to provide the dispositions for the four 1989 offenses cited by the director, which are documents necessary for the adjudication of the application. Therefore, the appeal must be dismissed on this basis.

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