U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

NOV 23 2004

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

IN RE: Applicant: [redacted]

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

The director denied the application because the applicant had been convicted of three felonies.

On appeal, the applicant points out that he has lived in the United States for 32 years, and that he has otherwise been a law abiding and productive member of his community. He states that the offenses all stemmed from the same domestic disorder.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(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 the applicant was convicted of two counts of Assaulting Police Officer W/Deadly Weapon on October 1, 1992. He was also convicted of two counts of Corporal Injury on Family Member Resulting in Traumatic Condition on November 16, 1993. Although the director referred to three felonies, documents in the record reveal these four felony counts. The applicant has not contested the fact of these convictions, other than to state that he has only two felony convictions and one misdemeanor conviction. Regardless, one felony conviction alone renders an alien ineligible for permanent residence.

The applicant is ineligible for adjustment to permanent resident status because of his felony convictions. 8 C.F.R. § 245a.3(c)(1). There is no waiver available in the legalization program for an alien who was convicted of a felony, regardless of how long he has lived in the United States.

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