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]

SEP 13 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 sustained.

The director terminated the applicant's status because the applicant failed to provide dispositions relating to criminal charges lodged against him.

On appeal, the applicant provides a letter from the State of California Department of Justice, indicating the lack of a criminal history regarding the applicant in the files of that bureau.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) 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)(iii). Also, such status may be terminated if the alien was ineligible for temporary residence. 8 C.F.R. § 245a.(2)(u)(i). Finally, status may be terminated if the alien commits an act which renders him inadmissible as an immigrant. 8 C.F.R. § 245a.2(u)(ii).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

On the application for temporary residence, where asked if he had been arrested, convicted or confined in a prison, the applicant indicated "concealed weapon." There is no indication that the officer who later interviewed the applicant regarding this application required him to indicate whether he had actually been convicted. That officer, however, did recommend that the application be granted, which may indicate that the officer was satisfied that the applicant did not have any disqualifying convictions.

In the same block on the application for permanent residence, the applicant indicated "3 times for warrants." No interview was conducted at this stage, and there is no indication as to whether the applicant was referring to convictions, or only arrests.

The record contains an FBI Identification Record showing the applicant was arrested on October 13, 1985 in California for Possession of Weapon to Commit Assault. The FBI record does not indicate that he was convicted. The text of the FBI record states "An individual should be presumed not guilty of any charge/arrest for which there is no final disposition stated on the record or otherwise determined."

On appeal, the applicant provides the aforementioned letter from the State of California Department of Justice, which indicates that the department had no record of a criminal history relating to the applicant. This letter, dated June 6, 1992, was written subsequent to the applicant's submissions of the applications for temporary and permanent residence, and would seemingly indicate that the references he made on his applications were to arrests rather than convictions.

Given the letter furnished on appeal, and the lack of any evidence to the contrary, there is no clear basis upon which to conclude that the applicant was convicted. Thus, there is no basis for termination of temporary resident status due to criminality.

ORDER: The appeal is sustained.