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

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 18 2005

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. The file has been returned to the service center that processed 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, Texas Service Center, and 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 four misdemeanors, and a felony involving a controlled substance.

On appeal, the applicant referred to his earlier statement made in response to the notice of intent to deny. In that statement, the applicant conceded the fact of his convictions, and pointed out that he had lived in the United States for 24 years. He stated that he sometimes pled guilty upon advice of counsel even though he might have been exonerated.

The applicant also indicated on appeal that he would provide a brief within 30 days. Almost four months later, he has not submitted a brief or any document.

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 director properly set forth the applicant's four misdemeanor convictions for Driving While Intoxicated and Driving Without a License. The applicant has not challenged those facts. Nor has he contested the fact of his felony conviction for Possession of Cocaine.

The applicant remains ineligible for permanent residence due to his four misdemeanor convictions and felony conviction. 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.

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.

Because of the cocaine conviction, the applicant is inadmissible. Within the legalization program, 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.