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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 13 2007**

XLA 88 515 3317

IN RE:

Applicant:



APPLICATION: Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The termination, which was initially issued by the Director, Western Service Center, was appealed to the Administrative Appeals Office (AAO) where the matter was remanded for further consideration. A new decision terminating the applicant's temporary resident status has since been issued by the Director, California Service Center. The applicant's appeal before the AAO remains in effect. The appeal will be dismissed.

In the most recent termination, the director determined that the applicant was statutorily ineligible for temporary resident status based on his felony conviction.

The AAO notes that the applicant submitted an appeal addressing the grounds for termination listed in the first adverse decision. As previously noted, the AAO remanded the matter based on counsel's submissions on appeal. The applicant has not, however, supplemented the record with any evidence or information addressing the criminal ground cited as the basis for the director's latest termination.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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 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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

An alien is excludable (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.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). Willful injury of one's spouse under California Penal Code section 273.5(a) is a crime of moral turpitude. *Grageda v. U.S. I.N.S.* 12 F.3d 919 (9th Cir. 1993).

In the present matter, the record shows that the applicant has been arrested for and/or convicted of the following criminal offenses:

1. On April 12, 1996, the applicant was arrested and charged with felony spouse beating. It appears that sentencing for violation of section 273.5 PC was deferred. The final court disposition for this offense and the outcome of this case is unknown.
2. On October 23, 1996, the applicant was arrested and charged with attempted spousal rape, a felony. The applicant was convicted of inflicting corporal injury on a spouse, a crime involving moral turpitude, in violation of section 273.5 PC. The applicant was sentenced to 120 days in jail and three years of probation.
3. On May 6, 2000, the applicant was arrested for driving under the influence with one prior. The final court disposition for this offense is unknown.

In a notice of intent to terminate dated April 6, 2004, the director informed the applicant of the adverse information obtained by Citizenship and Immigration Services (CIS) with regard to the applicant's criminal record. The applicant was instructed to provide CIS with the final court dispositions for the offenses discussed in Nos. 1 and 3 above. He was allowed 30 days in which to provide the requested information. However, the record shows that the applicant failed to provide documentation necessary to overcome his statutory ineligibility.

The regulations at 8 C.F.R. § 245a.2(k)(5) stated the following:

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

In the present matter, the applicant has a criminal record that shows at least one conviction of a crime involving moral turpitude. The applicant has failed to provide documentation regarding the two remaining offenses for which the final court dispositions are not known.

Therefore, the applicant is inadmissible and therefore ineligible for temporary resident status because he has been convicted of at least one crime involving moral turpitude. There is no waiver available to an alien excludable under section 212(a)(2)(A)(i)(I). *See* section 245A(d)(2)(B)(ii) of the Act.

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