



U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**

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FILE:

XLA-88-507-1253

MAY 09 2007

Dear M

This letter refers to your appeal of the decision of the Director, California Service Center, terminating your temporary resident status under section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

The director terminated your temporary resident status because you were convicted of one felony and one misdemeanor. The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 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).

"Conviction" is defined under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) as a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

On appeal, counsel asserts that you have not been convicted of a felony and a misdemeanor, as stated in the director's decision. Counsel maintains that you have instead been convicted of two misdemeanors, which does not preclude your eligibility for temporary resident status.

Court documents in the record and an FBI report based upon your fingerprints reveal that you were convicted of *Disturbing the Peace* in violation of section 415 of the California Penal Code on March 31, 1997 (Docket # [REDACTED]). You were sentenced to twelve months probation and one day imprisonment. You were also convicted of *Driving Under the Influence of Alcohol/Drugs Causing Bodily Injury* in violation of section 23153(a) of the California Vehicle Code on October 23, 1989 (Docket # [REDACTED]). You were sentenced to 36 months probation and 180 days imprisonment.

You were arrested by the Los Angeles Police Department on May 4, 2005 and charged under the California Vehicle Code of *Hit and Run with Property Damage* (Agency Case # [REDACTED]). You have submitted a court disposition from the Superior Court of California, County of Los Angeles, which states that there were no records found regarding "a May 05, 2005 hit & run charge." It should be noted that an FBI report reveals you were charged on May 4, 2005, not May 5, 2005, as stated in this court disposition. Consequently, the disposition related to your May 4, 2005 arrest is unknown.

Please submit a certified copy of your police record from the Los Angeles Police Department. This record should include a summary of your arrests by the Los Angeles Police Department, including the dates, charges and disposition for each arrest. Please also submit a certified court disposition related to your May 4, 2005 charge for *Hit and Run with Property Damage*.

Please respond to this request for evidence within thirty (30) days from the date of this letter. You should submit the requested evidence to the Administrative Appeals Office [Attention: LA Branch] at the address shown on the first page of this letter. In your response, please reference your file number, [REDACTED] and include your current address. If you fail to submit the requested evidence within the allotted thirty day period, the Administrative Appeals Office will dismiss your appeal.

Sincerely,

Robert P. Wiemann, Chief
Administrative Appeals Office

cc: [REDACTED]
[REDACTED]