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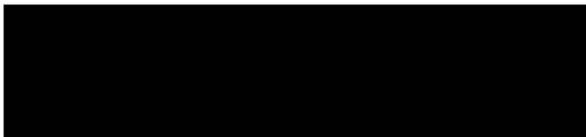


U.S. Citizenship
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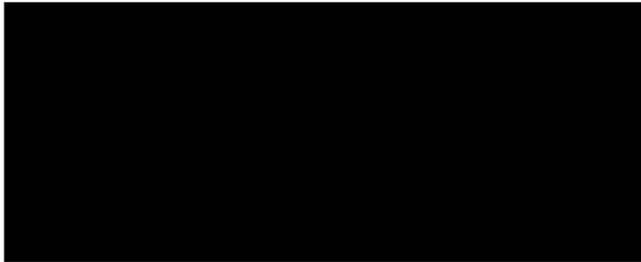
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JUN 01 2009



FILE:  Office: CALIFORNIA SERVICE CENTER Date:
XLA 88 508 02083

IN RE: Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center. The director withdrew his previous decision and reopened the proceedings for review. The Director, California Service Center, denied the application again and it is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director initially denied the application for lack of prosecution because the applicant failed to appear for two scheduled interviews.

On appeal from the initial decision, the applicant indicated that he did not appear for his interviews because he had been arrested and was in prison.

On April 9, 2003, the director withdrew the previous decision and reopened the proceedings for review.

In the subsequent decision, the director denied the application because he determined that the applicant had been convicted of a felony and three misdemeanors. The director also determined that the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

The applicant has neither addressed the subsequent decision nor provided any evidence to overcome the director's findings.

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 Act; 8 U.S.C. § 1255a(a)(4)(B). The regulation provides relevant definition at 8 C.F.R. 245a.2(c)(1).

“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 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.

The Form H-6 from the California Department of Motor Vehicle (DMV) dated September 20, 2006, reveals the following misdemeanor offenses:

1. On March 12, 1995, the applicant was arrested for driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC. On April 3, 1995, the applicant was convicted of this offense. The applicant was sentenced to serve time in jail, ordered to pay a fine, attend an alcohol treatment program and placed on probation for three years. [REDACTED]
2. On January 1, 1998, the applicant was arrested for driving while license is suspended or revoked for other reasons, a violation of section 14601.1 VC. On March 1, 1999, the applicant was convicted of this offense. The applicant was ordered to pay a fine and was placed on probation for two years. [REDACTED]
3. On June 10, 2000, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC and driving while license is suspended or revoked for other reasons, a violation of section 14601.1 VC. On August 4, 2000, the applicant was convicted of both offenses. The applicant was sentenced to serve time in jail, ordered to pay a fine and placed on probation for five years. [REDACTED]
4. On January 11, 2001, the applicant was arrested for driving without a license, a violation of section 12500(a) VC. On February 6, 2001, the applicant was convicted of this offense. The applicant was sentenced to serve time in jail, ordered to pay a fine and placed on probation for three years. [REDACTED].
5. On November 25, 2001, the applicant was arrested for driving while license is suspended or revoked for other reasons, a violation of section 14601.1 VC. On January 15, 2002, the applicant was convicted of this offense. The applicant was sentenced to serve time in jail, ordered to pay a fine and placed on probation for three years. [REDACTED]
6. On January 17, 2004, the applicant was arrested for driving while license is suspended or revoked for other reasons, a violation of section 14601.1 VC. On February 18, 2004, the applicant was convicted of this offense. The applicant was sentenced to serve time in jail, ordered to pay a fine and placed on probation for three years. [REDACTED]

Along with the offenses mentioned in numbers three and four above, the FBI report dated September 14, 2006, reveals the following offenses in the state of California.

7. On January 22, 1978, the applicant was detained by the Los Angeles Police Department for kidnapping. No formal charge was issued as the complaint was rejected by the district attorney's office.
8. On June 10, 1979, the applicant was arrested by the Pasadena Police Department for felony hit and run causing injury.
9. On August 11, 1982, the applicant was arrested by the Pasadena Police Department for assault with a deadly weapon. On January 1, 1983, the charge was dismissed. [REDACTED]

10. On August 2, 1983, the applicant was arrested by the Sheriff's Office in San Bernardino for possession of a dangerous weapon.
11. On December 13, 1984, the applicant was arrested by the Sheriff's Office in Norwalk for assault with a deadly weapon and vandalism under \$1000.00. The district attorney's office rejected the charges due to the interest of justice.
12. On October 3, 1987, the applicant was arrested by the Los Angeles Police Department for murder. The applicant was subsequently charged with assault with a deadly weapon causing great bodily injury and voluntary manslaughter. The applicant was convicted of voluntary manslaughter, a violation of section 192(a) PC and sentenced to serve six years in prison. The applicant was received at the Chino Institute for men on April 26, 1988. The remaining charge was dismissed.
13. On July 5, 2000, the applicant was arrested by the Sheriff's Department in Bakersfield for driving under the influence and driving with .08 percent or more alcohol in the blood.
14. On January 11, 2001, the applicant was arrested by the Sheriff's Department in Bakersfield for giving false information to a peace officer, a local ordinance violation and driving without a license.¹
15. On March 21, 2001, the applicant was arrested by the Sheriff's Department in Bakersfield for a work release program violation.

Along with the offenses mentioned in numbers seven through twelve above, the California Law Enforcement Telecommunication System (CLETS) report dated August 22, 1989, reflects the following offenses:

16. On October 29, 1978, the applicant was arrested by the South Pasadena Police Department for drunk driving on the highway, a violation of section 23102(a) VC. On October 30, 1978, the applicant pled *nolo contendere* to violating section 23102(a) VC.
17. On December 22, 1980, the applicant was arrested for reckless driving, a violation of section 23103 VC. On March 13, 1981, the applicant was convicted of this offense. The applicant was ordered to pay a fine and placed on probation.
18. On November 3, 1983, the applicant was arrested for driving with .10 percent or more alcohol in the blood, a violation of section 23152(b) VC. On November 7, 1983, the applicant was convicted of this offense. The applicant was sentenced to serve time in jail, ordered to pay a fine and placed on probation for three years.
19. On March 9, 1993, the applicant was detained by the Los Angeles Police Department for robbery. On March 10, 1993, the applicant was released as the complainant refused to prosecute.
20. In regards to number eight above, the CLETS report indicates that the applicant was only detained and the applicant was subsequently released due to further investigation.

¹ The Form H-6, which only reports traffic violations, indicates that on February 6, 2001, the applicant was convicted of driving without a license.

21. In regards to number ten above, the CLETS report indicates that the applicant was convicted on August 4, 1983 of a misdemeanor offense of violating section 12020 PC, possess/manufacture/sell dangerous weapon. The applicant was sentenced to serve time in jail. [REDACTED]

The director, in denying the application, determined that the applicant had been convicted of a felony and was inadmissible under section 212(a)(2)(A)(i)(I) of the Act in number 12 above. However, without the actual court disposition for this offense, the AAO cannot affirm this finding.²

Nevertheless, the applicant is ineligible for temporary resident status because he has been convicted of at least seven misdemeanors. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

Finally, the record reflects that on March 11, 1991, the applicant was ordered deported from the United States. The applicant is inadmissible to the United States, pursuant to section 212(a)(9)(A)(i) of the Act, based on his reentry into the United States within five years of the date of his removal.

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

² The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. §50.12, state, in part, if the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.