



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA Date: **MAY 21 2009**
XPW 90 241 01317

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. 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 adjustment from temporary to permanent resident status was denied by the Director, Western Service Center. The matter was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The matter is once again before the AAO on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of five misdemeanors, and he was therefore ineligible for adjustment from temporary to permanent resident status.

On appeal, the applicant indicated that he was appealing the Notice of Termination that terminated his temporary resident status and the Notice of Decision that denied his adjustment from temporary to permanent resident status, which were both issued on October 8, 1991. The applicant asserted that the director should withdraw both decisions as the director has “attempted to force to either appeal both of these or guess which one of the two I should appeal.”

The applicant submitted a single fee of \$50.00 for the denial to adjust his status from temporary to permanent resident and for the termination of his temporary resident status. As each application received a separate decision, two Form I-694s along with separate fees were required to be filed. Each decision advised the applicant of the requirement to file a timely Form I-694 along with fee. In the instant case, the applicant checked the box on the Form I-694 indicating he was appealing the application for permanent residence.

On appeal, the applicant requested a copy of the record of proceedings.

The case was remanded by the LAU as the director did not comply with the applicant’s requests for a copy of the record of proceedings. The applicant’s request was complied with and sent to his address of record. To date, no further correspondence has been presented by the applicant in support of his appeal.

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(b)(C)(ii) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B); 8 C.F.R. 245a.3(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).

The record contains court dispositions and a Form H-6 from the California Department of Motor Vehicles that reveals the applicant's criminal history in the state of California as follows:

1. On November 20, 1985, the applicant was arrested for driving without a license, a violation of section 12500(a) VC. On December 2, 1985, the applicant pled guilty to the misdemeanor offense. [REDACTED]
2. On January 4, 1987, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC; driving with .10 percent or more alcohol in the blood, a violation of section 23152(b) VC; and driving without a license, a violation of section 12500(a) VC. On October 15, 1987, the applicant was found guilty of violating sections 23152(a) VC, and 23152(b) VC, both misdemeanors. The remaining offense was dismissed. [REDACTED]
3. On March 5, 1989, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; and possession of a controlled substance, a violation of section 11350(a) H&S. On April 5, 1989, the applicant was convicted of violating section 23152(a) VC, a misdemeanor. The remaining offenses were dismissed. [REDACTED]
4. On July 17, 1989, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC. On July 18, 1989, the applicant was convicted of this misdemeanor offense. [REDACTED]
5. On January 16, 1990, the applicant was charged with driving under the influence with priors, a violation of section 23152(a)/23175 VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b)/23175 VC; both felonies and driving without a license, a violation of section 12500(a) VC, a misdemeanor. On January 31, 1990, the applicant pled guilty to violating section 23152(a)/23175 VC pursuant to section 859PC. The applicant was sentenced to serve 16 months in prison. The remaining offenses were dismissed. [REDACTED]

The FBI report dated August 21, 2008, reflects the following additional offenses in the state of California:

- On July 23, 1992, the applicant was arrested by the Shafter Police Department for driving under the influence with three or more priors. The applicant was subsequently convicted of this offense and sentenced to serve two years in prison.
- On August 15, 2008, the applicant was arrested by the Sheriff's Office in Napa for driving while license is suspended or revoked.

The applicant is ineligible for adjustment to permanent resident status because of his one felony and five misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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.3(c)(1). The applicant has failed to meet this burden.

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