



U.S. Citizenship
and Immigration
Services

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FILE:



XPW 90 150 00221

Office: CALIFORNIA SERVICE CENTER

Date: NOV 30 2009

IN RE:

Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent 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. 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application because the applicant failed to submit the court disposition pertaining to his arrest on November 6, 1987, for auto burglary.

On appeal, the applicant put forth a request for a copy of the record of proceedings (ROP) and indicated that a brief and/or evidence would be submitted to the AAO within 30 days after the receipt of his ROP request. A copy of the material contained in his record was released to the applicant on April 17, 1993.

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)(1)(C)(ii) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulation provides relevant definition at 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 Form H-6 from the California Department of Motor Vehicles dated May 21, 1987, indicates that the applicant has been convicted of violating section 12500(a) VC, driving without a license, a misdemeanor, on July 12, 1982. [REDACTED]

The court documentation from the Los Angeles County Municipal Court indicates that the applicant was convicted of violating section 654.1 PC, sell public transportation without a license, a misdemeanor, on April 11, 1986. [REDACTED]

The FBI reflects that the applicant was arrested by the Sheriff’s Office in Norwalk, California for auto burglary from vehicle.

On September 26, 1991, a notice was sent to the applicant requesting that he submit the court disposition for his arrest on November 6, 1987 for auto burglary. The applicant, in response, only submitted the court disposition for [REDACTED]

On appeal, the applicant submits a document date-stamped March 11, 1993, indicating that he had been incarcerated in the Los Angeles County Jail from November 6, 1987 to November 9, 1987 for auto burglary [REDACTED], but he was released due to insufficient evidence.

On September 17, 2009, the AAO sent a notice to the applicant informing him that the March 11, 1993 document could not be considered credible as it was not signed and was not on the Los Angeles County Sheriff's Office letterhead. The applicant was granted 30 days in which to submit certified documentation from the court, the arresting agency or California Department of Justice reflecting the final outcome of his arrest on November 6, 1987.

The applicant, in response, provides a signed letter dated October 9, 2009 on Los Angeles County Sheriff's Department letterhead, which indicates that the applicant had been incarcerated from November 6, 1987 to November 9, 1987 for auto burglary, but was released due to insufficient evidence.

The applicant has overcome the single deficiency outlined in the director's decision. The two misdemeanor convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.3(c)(1) and section 245A(b)(1)(C)(ii) of the Act.

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 met this burden.

ORDER: The appeal is sustained. The director shall complete the adjudication of the application.