



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES
XPW 91 044 1134

Date: MAR 04 2010

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of a felony.

On appeal, counsel for the applicant asserts that the conviction is for a misdemeanor rather than a felony. He requested a copy of the record of proceedings. The request was processed on October 14, 2009.¹ Counsel indicated he would submit a brief within 30 days of receipt of the copy of the record. More than four months have lapsed and nothing more has been submitted for the record.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). "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).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) 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 (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The issue in this proceeding is whether the applicant has established his eligibility for permanent resident status. The AAO has reviewed the evidence of record, including the applicant's criminal record, and concludes that the applicant has not met his burden of proof to establish his eligibility for permanent resident status.

¹ NRC2009013329

[REDACTED]

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The record before the AAO reveals that the applicant was convicted on September 19, 1994 on a felony charge of violating section 496(a) of the California Penal Code, receiving/concealing stolen property. [REDACTED]

The applicant stands convicted of one felony. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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