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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



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FILE:



Office: California Service Center

Date:

ACB 17 2005

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. 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Western Service Center is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant failed to provide necessary documents concerning his criminal record. On appeal, the applicant explains that he did send in requested documents in response to the notice of intent to terminate.

Temporary resident status may be terminated if the alien is convicted of a felony, or three or more misdemeanors. *See* 8 C.F.R. § 245a.2(u)(1)(iii). Also, such status may be terminated if the alien was ineligible for temporary residence. 8 C.F.R. § 245a.(2)(u)(1)(i). Finally, status may be terminated if the alien commits an act which renders him inadmissible as an immigrant. 8 C.F.R. § 245a.2(u)(1)(ii).

"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).

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. *See* Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act; 8 U.S.C. 1182(a)(2)(A)(i)(I).

In the Notice of Intent to Terminate, the applicant was directed to provide the dispositions of two different Assault With Deadly Weapon charges lodged against him on December 29, 1976 and February 8, 1979. He failed to do so, and has not provided them on appeal. He did provide evidence that he was sentenced on January 16, 1991 to one year of imprisonment in the county jail for Burglary, Second Degree. Such offense is a crime involving moral turpitude, and the applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Pursuant to section 245A(d)(2)(B)(ii)(I) of the Act, 8 U.S.C. 1255a(d)(2)(B)(ii)(I), such inadmissibility may not be waived.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a negative determination. *See* 8 C.F.R. § 245a.2(k)(5).

The applicant has not provided the Assault With Deadly Weapon dispositions referred to above. It is concluded that the applicant has failed to provide documents necessary to resolve his possible ineligibility on those charges. Therefore, the appeal must be dismissed on this basis, as well as his inadmissibility due to the burglary conviction.

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