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U.S. Citizenship
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Services

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FILE:



Office: California Service Center

Date: **AUG 26 2005**

IN RE:

Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status 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 application for adjustment from temporary to permanent resident status was denied by the Director, Western Service Center, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to provide criminal dispositions, thereby preventing the director from determining the applicant's eligibility.

On appeal, the applicant submits a report from the California Department of Motor Vehicles, and receipts for fines paid to the court. He admits that, regarding the April 30, 1988 arrest, it was a mistake on his part to resist arrest. He indicates he paid the fine, and that copies of the payment were included. Regarding the February 8, 1987 arrest, the applicant contends he was not arrested, but did pay a fine. Finally, concerning the October 23, 1977 arrest, the applicant indicates that he was imprisoned for 24 hours only, and that (as of February 28, 1993) the charges were "still in progress."

The applicant also requests oral argument. Such a request must set forth specific facts explaining why such argument is necessary to supplement the appeal. 8 C.F.R. § 103.3(b). Oral argument will be denied in any case where the appeal is found to be frivolous, where oral argument will serve no useful purpose, or where written material or representations will appropriately serve the interests of the applicant. The applicant's request does not set forth an explanation of why oral argument is necessary, and fails to establish that the material submitted will not appropriately serve his interests. Accordingly, the request for oral argument is denied.

An alien who is convicted of a felony, or three or more misdemeanors, or a crime involving moral turpitude, is ineligible for permanent resident status. 8 C.F.R. § 245a.3(c)(1); 8 C.F.R. § 245a.3(c)(2).

"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 report of the Federal Bureau of Investigation shows the following charges lodged against the applicant in California:

1. Misdemeanor Drunk Driving, October 23, 1977;
2. Assault and Battery on Person, and Obstruct/Resist Police Officer, February 8, 1987;
3. Weapon Assault and Battery, June 14, 1987;
4. Bench Warrant of Arrest for Failure to Pay, Battery, and Obstruct/Resist Police Officer, April 30, 1988.

It is noted that the report indicates that, for each offense shown in #4, the applicant was cited and released.

The possibility exists that the entries in #3 and #4 above simply repeat the two charges listed in #2, although the applicant has not stated that. The "contributing office" to the report in each instance was the Sheriff's Office, Santa Ana County. Even if it is concluded that the applicant was therefore only arrested for the offenses shown in #1 and 2, that comprises three misdemeanor or felony charges.

In a related matter, the director advised the applicant in a notice of intent to terminate to submit the actual court records or certified letters from the court concerning all of the above charges. The applicant failed to respond, and the director therefore terminated the applicant's status. The director later denied this application for adjustment to permanent resident status.

On appeal to the adjustment denial the applicant states:

I am enclosing receipts of the bench warrant for failure to pay Battery on the date of July 29, 1988 on the amount of \$225 Case [REDACTED] paid at Central Orange County Municipal Court. And a receipt paid on June 8, 1988 for \$325, August 29, 1988 amount paid \$325. Also I am enclosing a record from DMV to establish the eligibility of permanent residence. Furthermore, copies of court dispositions will be submitted for all arrests.

The applicant submits Form K4, dated February 22, 1993, from the California Department of Motor Vehicles. It shows no vehicular convictions. However, the report was issued for [REDACTED] while the applicant was arrested for Drunk Driving in 1977 under the name of [REDACTED]. Furthermore, it is not clear that such a report would show arrests and convictions occurring as long ago as 16 years.

The applicant furnishes receipts showing he paid a total of \$650: half on June 8, 1988 and half on August 29, 1988. The receipts do not explain what charges they relate to, although they may relate to a conviction for Battery as the applicant seemingly alludes to. The applicant has not, as he said he would, provided copies of the court dispositions.

The applicant admits that, regarding the April 30, 1988 arrest, it was a mistake on his part to resist arrest. He indicates he paid the fine, and that copies of the payment were included. Regarding the February 8, 1987 arrest for Assault/Obstruction, the applicant contends he was not arrested, but did pay a fine. Finally, concerning the October 23, 1977 arrest for Drunk Driving, the applicant indicates that he was imprisoned for 24 hours only, and that (as of February 28, 1993) the charges were "still in progress."

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).

Based on the applicant's references to having paid fines, it is concluded that he must have been convicted of some offense(s). He has not submitted court records regarding convictions, or court letters stating convictions did not occur. It is concluded that the applicant has failed to provide documents necessary for determining the

number of misdemeanor or felony convictions that he has, and whether they relate to crimes involving moral turpitude. Therefore, the appeal must be dismissed on that basis.

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