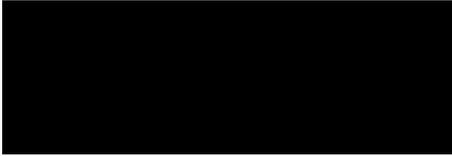


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**U.S. Citizenship
and Immigration
Services**



L1

FILE:



Office: CALIFORNIA SERVICE CENTER

FEB 09 2005
Date:

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:

ORIGINAL COPY

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 on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant had been arrested for an offense relating to a controlled substance, and had failed to provide the disposition.

On appeal the applicant initially indicated that he may have filed his application under the wrong section of law. He claimed that he had not been advised that he could have applied for temporary residence under the special agricultural worker provision. He stated that he would research that possibility.

Later, the applicant indicated that he would like to base his appeal on the *Naranjo* lawsuit. He pointed out that special agricultural worker applicants, according to that lawsuit, could not have charges or convictions that occurred prior to December 18, 1989 used against them.

The applicant applied for temporary residence under the legalization, or amnesty, provisions of section 245A of the Act. While he references the section 210 special agricultural worker provision, this appeal will be adjudicated under the section of law, 245A, under which he applied.

The status of an alien lawfully admitted for temporary residence under section 245A of the Act may be terminated if he is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. 245a.2(u)(1)(iii). It may also be terminated if the alien commits an act that makes him inadmissible to the United States as an immigrant. See Section 245A(b)(2)(B) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act.

The record reveals the applicant was arrested on July 19, 1986 in Riverside, California for Opiate Infl. Controlled Substance. The director requested that the applicant provide the court disposition, or a certified letter from the court where the hearing was held. The applicant failed to comply, and the director terminated the applicant's status.

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 any document, such as a court record from Riverside, or a letter from the State of California Department of Justice, which demonstrates that the arrest did not result in a conviction. It is concluded that the applicant has failed to provide a document necessary for the adjudication of his application.

The applicant has referenced a court case, *Naranjo*, in an effort to show that a pre-December 18, 1989 charge should not be considered. That case related only to special agricultural worker applicants, and has no effect on this matter. Nevertheless, the court of appeals in *Naranjo-Aguilera v. INS*, 30 F.3d 1106 (9th Cir. 1994) ruled that the district court had no jurisdiction to rule on the "one felony, three misdemeanor" regulation and its implementation by the Immigration and Naturalization Service. It left intact the Service's determination that conviction(s) of a felony or three or more misdemeanors committed in the United States support a denial of an application for temporary residence as a special agricultural worker as well as a termination of temporary residence, *regardless of when the convictions occurred*. Further, it is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992).

Thus, even if this application were to be considered a special agricultural worker application, any offenses that occurred prior to December 18, 1989 could still be considered in determining the applicant's eligibility.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 245a of the Act, 8 U.S.C. 1255a, *and is otherwise eligible for adjustment of status under this section*. 8 C.F.R. 245a.2(d)(5). The applicant has failed to meet this burden.

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