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**U.S. Citizenship
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Services**

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FILE:



Office: California Service Center

Date: **JUL 26 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 failed to provide criminal dispositions, thereby preventing the director from determining that the applicant was eligible.

On appeal, the applicant explains he was incarcerated because he failed to pay a traffic ticket. He indicates he has had a clear record since then.

Temporary resident status may be terminated if the alien is convicted of a felony, or three or more misdemeanors. 8 C.F.R. § 245a.2(u)(1)(iii).

"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).

As indicated by the director, the applicant was convicted of Unlicensed Driver on July 5, 1988, and was arrested for Unlicensed Driver and Failure to Appear on November 16, 1988. These are all misdemeanors in the California Vehicle Code.

The applicant was arrested for Challenge Fight in Public Place, a misdemeanor in the California Penal Code, on March 14, 1993, and was later convicted of this charge.

In the notice of intent to terminate, the director advised the applicant that, regarding the November 1988 arrest, he should provide either an "H-6" or DL-414 report from the California Department of Motor Vehicles, which would show the dispositions of the vehicular charges, *and* the actual court records or a certified letter from the court. The applicant failed to respond, and did not submit these documents on appeal. He did mention on appeal that he served time for failure to pay a ticket, implying that he was convicted of the Failure to Appear charge.

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).

It is concluded that the applicant has failed to provide documents necessary for determining the number of misdemeanor convictions that he has. Therefore, the appeal must be dismissed on this basis.

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