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U.S. Citizenship  
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FILE: [REDACTED] Office: California Service Center Date: JUN 29 2005

IN RE: Applicant: [REDACTED]

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, California 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.

In response to the earlier notice of intent to terminate, the applicant provided letters from his employer. She pointed out that the applicant served less than five days imprisonment for each conviction, and questioned whether those offenses could therefore be considered misdemeanors. She also stated that the threat of losing his job, family and residence in the United States has caused him to forego drinking alcohol.

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).

The applicant was convicted in California of Driving Under the Influence on April 15, 1983 and December 18, 1987. Although he may have served less than five days for each offense, Driving Under the Influence is punishable by more than five days and is classified as a misdemeanor in the California Vehicle Code. Therefore, these are misdemeanor convictions pursuant to the above definition.

The applicant was also arrested in California for Driving Under the Influence With Priors, and Driving With .08 Blood Alcohol Content on February 16, 2003. The applicant has not claimed that these charges were dismissed.

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 disposition of the February 16, 2003 arrest. Actual proof from the courts, or state agencies such as the Department of Motor Vehicles that receive information from the courts,

is necessary. It is concluded that the applicant has failed to provide documents necessary for the adjudication of the application. Therefore, the appeal must be dismissed on this basis.

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