



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: OCT 25 2005

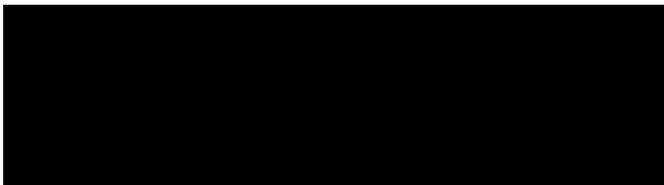
IN RE:

Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 application for adjustment from temporary to permanent resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of four misdemeanors.

On appeal, counsel asserts:

1. The convictions actually pertain to another individual who used the applicant's name;
2. Even though it was another person who was convicted, the three offenses resulting in convictions on May 23, 1989 should be considered to constitute only one conviction;
3. The applicant was fined for a traffic *infraction*, not misdemeanor, on June 14, 2001.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). "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).

According to the California Department of Motor Vehicles (DMV) "H-6" report, dated April 9, 1993, the applicant was convicted of:

1. Failure to Appear, on December 27, 1988;
2. Driving Under the Influence, on May 23, 1989 (violation date December 11, 1988);
3. Driving Under the Influence, on May 23, 1989 (violation date May 7, 1989);
4. Driving Without a License, on May 23, 1989.

It is noted that the H-6 report is very complete and precise, and shows both versions of the applicant's name: [REDACTED]. It also shows his correct birth date, December 12, 1958, and the same number that appears on his California DMV identification card that bears his photograph. Given this, there is no reason to accept counsel's unsupported assertion that another individual improperly used the applicant's name and managed to deceive the police, court and DMV. Without documentary evidence to support the claim, the assertions of counsel will not satisfy an applicant's burden of proof. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983).

Similarly, there is also no legal or logical reason to consider the multiple convictions on May 23, 1989 to constitute only one conviction.

Counsel has furnished a "Short Docket Summary" from the Superior Court of California, County of Orange, which shows the applicant was charged with Unlicensed Driver on April 6, 1994 and with Failure to Appear on June 1, 1994. It further shows the applicant pled guilty to these offenses on June 14, 2001, and that they were deemed infractions.

Counsel has also furnished evidence of his efforts to obtain any additional criminal records pertaining to the applicant from state and county agencies in California. This relates to the director's request that the applicant provide the dispositions of Failure to Appear, Driving Without a License, and Failure to Provide Proof of Insurance charges filed on May 7, 1989. Counsel, on July 16, 2001, explained that the agencies had not yet responded to him, and pointed out that it would be unfair if this appellate decision were to be rendered prior to the issuance of the responses. As four years have passed, it must be assumed that counsel has not received any beneficial response to be entered into this record.

Counsel further points out that the applicant must be considered innocent until proven guilty of these May 7, 1989 charges. Regardless, the applicant was clearly convicted of the four misdemeanor charges shown above. Because of these misdemeanor convictions, he is ineligible for adjustment from temporary to permanent resident status.

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