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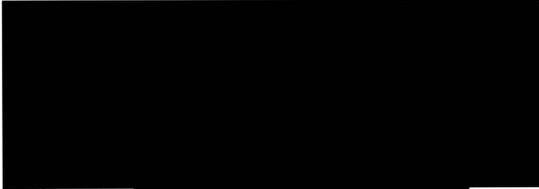
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



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

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FILE:

Office: LOS ANGELES

Date: NOV 28 2006

XPW 90 094 00481

INRE:

Applicant:

APPLICATION:

Application for Adjustment from Temporary to Permanent 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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert", written over a horizontal line.

Robert Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because it was determined that the applicant had been convicted of at least three misdemeanors in the United States, and he was therefore ineligible for adjustment from temporary to permanent resident status.

On appeal, the applicant requests that his circumstances be taken into consideration. The applicant asserts:

As you know by reviewing my file, I have been denied permanent citizenship due to three misdemeanors and one felony on my record. I know in the past I have made serious mistakes which I am most apologetic for and embarrassed about. I am at your mercy and plead for the denial to be reversed.

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).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

The FBI reports dated August 27, 2002 and February 7, 2006 reflect the following offenses in the state of California:

1. On February 29, 1992, the applicant was arrested by the Placentia Police Department for vandalism, a violation of section 594(a), a misdemeanor. The applicant was convicted of this offense and sentenced to serve ten days in jail and placed on probation for three years.
2. On November 6, 1992, the applicant was arrested under warrant for robbery by the Anaheim Police Department. On November 9, 1992, the applicant was charged with robbery in the second degree, a violation of section 212.5(b) PC, and burglary in the second degree, a violation of section 460.2 PC. The applicant was convicted of violating section 460.2 PC., a felony. The applicant was sentenced to serve 180 days in jail and placed on probation for three years. The robbery charge was dismissed.

3. On January 16, 2002, the applicant was arrested by the Sheriff's Office in Santa Ana for driving under the influence, a violation of section 23152(a) VC.

At the time of his interview on February 13, 2006, the applicant submitted a court disposition for number three above which revealed the following:

4. On or about December 25, 1996, the applicant was arrested for violating section 23152(a) VC, driving under the influence; section 12500(a) VC, driving without a license; and section 23152(b) VC, driving with .08 percent or more alcohol in the blood, all misdemeanors. On January 16, 2002, the applicant was convicted of violating sections 23152(a) VC and 12500(a) VC. The applicant was sentenced to serve 25 days, ordered to enroll, attend and complete a fine and was placed on probation for three years for violating section 23152(a) VC.

On February 13, 2006, the director issued a Form 1-72, requesting that the applicant submit the final original court dispositions for his arrests on February 29, 1992, November 6, 1992 and November 9, 1992 from the City Attorney's Office. It is noted that the applicant's arrests on November 6 and 9, 1992 are one and the same. The applicant, in response, submitted an additional copy of the court disposition for number four above and a California Department of Justice (DOJ) report dated March 30, 2006, which revealed the information in number four above as well as the following:

5. On February 29, 1992, the applicant was arrested by the Placentia Police Department for vandalism, a violation of section 594(a), a misdemeanor. On August 11, 1992, in the Fullerton Municipal Court, the applicant was convicted of this offense and sentenced to serve 10 days in jail and placed on probation for three years.
6. On November 6, 1992, the applicant was arrested under warrant for robbery by the Anaheim Police Department. On November 9, 1992, the applicant was charged with robbery in the second degree, a violation of section 212.5(b) PC, and burglary in the second degree, a violation of section 460.2 PC. November 24, 1992, in the Orange County Superior Court, the applicant was convicted of violating section 460.2 PC, a felony. The applicant was sentenced to serve 10 days in jail and placed on probation for three years. The robbery charge was dismissed.

The applicant also submitted:

7. A court docket report which indicated the sentence handed down on November 24, 1992 for number six above.
8. A court disposition which reveals that on or about April 24, 1996, the applicant was arrested for violating section 14601.1(a) VC, driving while license is suspended or revoked, a misdemeanor, and section 4000(a) VC, vehicle registration, a infraction. On June 5, 2005, the applicant was convicted of both offenses. For section 14601.1(a) VC, the applicant was ordered to pay a fine and placed on probation for three years. On September 10, 1996, a charge of violating 1203.2 PC, revocation of probation was added. On January 16, 2002, the applicant pled guilty to this offense and sentenced to ten days in jail to be served consecutively with number four above.

Burglary is considered a crime involving moral turpitude only when it is established that the offense was committed with the intent to commit a crime involving moral turpitude, *Matter of Frentescu*, 18 I&N

Dec. 244 (BIA 1982). As the record does not contain documentation describing the circumstances of the offense, the applicant's **intent** is not known. Therefore, at this time, the record is not sufficient to establish the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

The applicant, however, is ineligible for adjustment to permanent resident status because of his felony and four misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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