



U.S. Citizenship
and Immigration
Services

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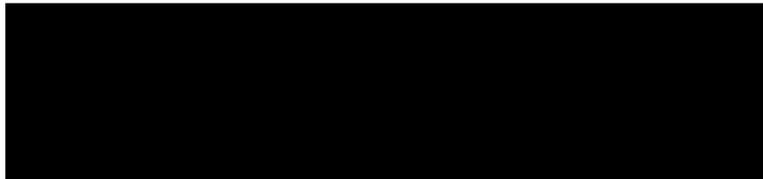
Office: NEBRASKA SERVICE CENTER

Date: JUL 17 2007

XYA 88 157 1051

IN RE:

Applicant:



APPLICATION: Application for Temporary 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Yakima District Office initially denied the application for temporary resident status in a decision dated November 16, 1988 because the applicant failed to appear on the two occasions when he was scheduled for an interview with an immigration officer. In response, the applicant filed a Form I-694 Notice of Appeal of Decision. Apparently as a result of discovering that the applicant had been incarcerated at the time of the scheduled interviews, the Acting Director, Nebraska Service Center, issued another decision on April 3, 2006 denying the application based on the applicant's conviction of a felony or three or more misdemeanors. The applicant's appeal remains pending with the AAO. The appeal will be dismissed.

The acting director determined the applicant was ineligible for legalization because he had been convicted of a felony or three or more misdemeanors. The acting director also noted that the applicant had failed to respond to the Notice of Intent to Deny issued on January 13, 2006, which had requested additional evidence to establish that the convictions did not pertain to the applicant. The acting director also noted that the notice had been sent to the applicant's last known address and to the accredited representative, but both attempts at delivery were returned as undeliverable mail.

In the original appeal, the applicant requested to know the basis for asserting the applicant had been convicted of a crime. He also requested that he have an opportunity to seek an expungement, in the case that there was a conviction. The record indicates a copy of the legalization record was sent to the accredited representative on February 10, 1993. The cover letter to the copy of the record stated that the applicant would be given until March 15, 1993 to respond. The record indicates the applicant never responded to this letter.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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 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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

Reports from the Superior Court of the State of Washington; County of Yakima, dated July 22, 1985 and July 6, 1988 show that the applicant was convicted of the following offenses at the time the initial denial was issued:

1. On July 22, 1985, the applicant was convicted of the crime of indecent liberties in violation of section 9A.44.100(1)(b) of the Revised Code of Washington (RCW), docket # [REDACTED], a Class B felony punishable by a maximum penalty of not more than ten years in prison and/or \$20,000;
2. On July 6, 1988, the applicant was convicted of the crime of possession of a controlled substance – cocaine, in violation of section 69.50.401 of the RCW, docket # [REDACTED] punishable by a maximum penalty of not more than five years in prison and/or \$10,000.00; and
3. Two acts of second degree burglary committed on February 8, 1983 and May 26, 1984, which were referenced in the July 6, 1988 report in the section entitled “Criminal History.”

In addition, a report of the United States District Court for the Eastern District of Washington indicates that the applicant was sentenced on December 5, 1988 to two years in prison for the offence of being an illegal alien in the United States after deportation, in violation of 8 U.S.C. § 1326.

It is clear from the record that the applicant has been convicted of at least one felony. Therefore, the applicant is ineligible for temporary resident status. Section 245A(a)(4)(B) of the Act; 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.