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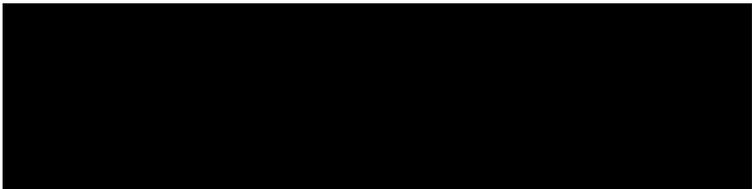
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
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Services**

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FILE:

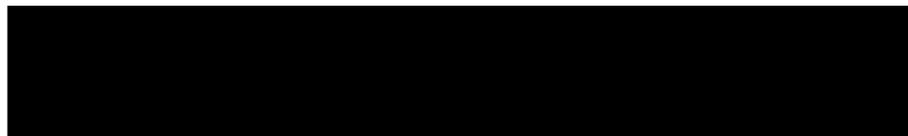
XPW 90 151 10353

Office: CALIFORNIA SERVICE CENTER

Date: JUN 05 2007

IN RE:

Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status pursuant to 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 application for adjustment from temporary to permanent resident status was denied by the Director, California Service Center. The denial of the adjustment application was appealed to the Administrative Appeals Office (AAO). The AAO incorrectly applied the appeal to the termination of the applicant's temporary residence and dismissed the appeal. This case was reopened pursuant to the regulations at 8 C.F.R. § 103.5(b) which provide that the AAO may of its own volition (sua sponte) reopen or reconsider a decision under section 245A of the Immigration and Nationality Act (Act) and the previous dismissal shall be withdrawn.<sup>1</sup> The matter is again before the AAO on appeal. The appeal will be dismissed.

The director denied the adjustment application because the applicant's temporary resident status had been terminated, and the applicant was therefore not eligible for adjustment to permanent resident status. The director had terminated the applicant's temporary resident status because the applicant had failed to assist the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services of CIS) in providing requested court documents relating to his criminal history as required under 8 C.F.R. § 245a.3(g)(5).

On appeal, counsel contends that the applicant never received correspondence relating to the termination of his temporary resident status. Counsel asserts that the applicant's temporary residence was wrongfully terminated because the only court records currently available demonstrate that he was convicted of a single misdemeanor offense. Counsel submits documentation in support of the appeal.

An alien whose temporary resident status has been terminated under 8 C.F.R. § 245a.2(u) is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5).

An applicant for adjustment to permanent resident status under section 245A of the Act has the burden to establish by a preponderance of the evidence that he or she is admissible to the United States and has not been convicted of any felony or three or more misdemeanors. *See* 8 C.F.R. § 245a.3(b)(3).

The record reveals that the applicant's temporary resident status was terminated on February 14, 1992, because the he had failed to assist the Service in providing requested court documents relating to his criminal history as required under 8 C.F.R. § 245a.3(g)(5). Specifically, the record contains a printout from the Federal Bureau of Investigation (F.B.I.) that is dated February 13, 2006, which based upon fingerprint comparison reflects the following relating to the applicant's criminal history:

- An arrest under the name [REDACTED] on August 17, 1983 by the Long Beach, California Police Department for a violation of section 286, Sodomy, of the

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<sup>1</sup> The AAO dismissed the appeal as frivolous. On motion, counsel submits evidence that he had in fact submitted a brief within thirty days of the filing of the appeal, but due to CIS error, such brief had not been incorporated into the record of proceedings. The AAO accepts the evidence counsel submitted a substantive brief to supplement the appeal.

California Penal Code and a separate violation of section 288, Crime with a child under the age of 14, of the California Penal Code;

- An arrest under the name [REDACTED] on March 15 1986 by the Madera, California Police Department for a violation of section 484, Petty theft, of the California Penal Code and a separate violation for conspiracy to commit a violation of section 484, Petty theft, of the California Penal Code;
- The issuing of a warrant for arrest under the name [REDACTED] on April 22, 1986 by the Long Beach, California Police Department for a violation of section 484, Petty theft-shoplifting, of the California Penal Code; and,
- An arrest under the name [REDACTED] on April 25, 1986 by the Madera, California Department of Corrections for a violation of section 484, Petty theft, of the California Penal Code.

In addition, the applicant submitted a copy of a State of California Department of Motor Vehicle Driver License Information Request dated September 21, 1987 that listed the applicant's name as [REDACTED] and reflected the following:

- An arrest on December 8, 1985 for a violation of section 12500(a), Driving without a license, of the California Vehicle Code and a separate violation of section 26709, Failure to have the proper number of mirrors on a vehicle, of the California Vehicle Code; and,
- An arrest on November 25, 1986 and subsequent convictions on February 10, 1987 for a misdemeanor violation of section 40508(a), Failure to appear or pay a fine, of the California Vehicle Code, and a violation of an infraction under section 21453(a), Failure to stop for a red signal, of the California Vehicle Code.

The applicant had thirty (30) days in which to appeal the director's decision terminating his temporary resident status. However, he failed to do so. While the applicant has now submitted documentation in an effort to overcome the ground of termination, such documentation would have had to have been submitted with an appeal of the termination in order to receive consideration.

The applicant is not a temporary resident. Therefore, he is ineligible for adjustment from temporary to permanent resident status.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility for adjustment from temporary to permanent resident status.