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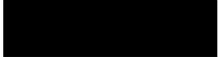
U.S. Citizenship  
and Immigration  
Services

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FILE:



WAC 04 150 50200

Office: LOS ANGELES

Date:

NOV 05 2007

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:

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 "R. P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment of status from temporary to permanent resident was denied by the District Director, Los Angeles, California. The decision was appealed to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal on March 29, 2007. The applicant asserted that the appeal had been incorrectly denied, submitted additional evidence, received by the AAO on May 22, 2007, and requested that the application be reconsidered. In response, the AAO has sua sponte reopened the application.<sup>1</sup> The AAO's decision of March 29, 2007 will be withdrawn. The appeal will be sustained.

The issue on appeal was whether the district director correctly denied the application based on the applicant's failure to provide the final court dispositions of all arrests since her arrival in the United States. In her decision, the district director referred to a 2005 Federal Bureau of Investigation (FBI) report in the record that indicated that the applicant had been arrested in Los Angeles, California, on August 21, 2003 and charged with one count of battery on a person. In response to a request for a final disposition related to that arrest, the applicant submitted a document dated July 25, 2006 from the Superior Court of California, County of Los Angeles, indicating that a criminal record search had been conducted using the name [REDACTED] and no criminal record had been found. The district director concluded that the applicant had failed to fully comply with the request for evidence and that the reason that no records were found was possibly that the search names used differed from the arrest name of [REDACTED]. On appeal, the applicant submitted another criminal record search document from the Superior Court of California, County of Los Angeles, dated August 15, 2006, indicating that no criminal record was found for [REDACTED] and listing her date of birth, [REDACTED]. The AAO found that document to be insufficient evidence to establish the applicant's eligibility for adjustment to permanent resident, stating that the FBI record, based on a fingerprint search, provided a more thorough account of an applicant's criminal background than a local record, based on a name search. The AAO therefore dismissed the appeal.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment of status from temporary to permanent resident. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C). 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

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<sup>1</sup> The AAO may sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

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).

Declarations by an applicant that he or she has not had a criminal record are subject to a verification of facts by the U.S. Citizenship and Immigration Service (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in denial of the application. 8 C.F.R. § 245a.3(g)(5).

In this case, the applicant submitted two documents from the relevant court confirming that she did not have a criminal conviction, the first document in response to a request for evidence from CIS and the second in response to the district director's denial. In her letter requesting reconsideration of the dismissal of her appeal the applicant correctly stated that she could not provide a final disposition by a court because no charges were ever considered in court. She also provided a letter, dated May 14, 2007, from the Los Angeles City Attorney's Office explaining that no criminal charges were filed against Julia Sanchez for the violation dated August 21, 2003, the date of the Los Angeles Police Department charge identified by the FBI report in the record.

Upon reconsideration, the AAO finds that the applicant did fully cooperate in the verification process by submitting records from the relevant criminal jurisdiction. The AAO also notes that although an FBI report is beneficial in providing a record of arrests, it is not conclusive of a record of criminal charges or convictions, as those records are maintained by the courts. As in this case, an arrest documented by the FBI may indicate police department action and may not result in any charges being filed in court. In other cases, charges may subsequently be dismissed, or final dispositions may indicate that charges did not result in convictions. The FBI report, although evidence of an applicant's potential criminal record, is therefore limited in its applicability. Relevant court reports of no criminal record are sufficient evidence that an applicant has not been convicted of crimes that would serve as a basis of ineligibility for adjustment of status.

The applicant has fully cooperated in the verification process regarding evidence obtained in the FBI report, first in response to the initial request for additional evidence, again on appeal, and finally in connection with her request to reconsider her appeal. She has explained that no final court disposition of her arrest exists because no charges were filed, and she has provided documentary evidence confirming her assertion. There is no evidence in the record to support a conclusion that she is inadmissible to the United States for criminal conduct or that she is ineligible to adjust status because of the commission of a felony or three or more misdemeanors. Therefore, the prior decision of the AAO is withdrawn and the applicant's appeal is sustained.

**ORDER:** The AAO decision of March 29, 2007 is withdrawn. The appeal is sustained.