



**DISCUSSION:** The termination of the applicant's temporary resident status by the Director, Western Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because evidence in the applicant's record indicates he has been convicted of four misdemeanor offenses.

On appeal, the applicant asserts that he did not receive the director's notice of intent to terminate.

Section 245A of the Immigration and Nationality Act (Act) provides for the termination of temporary resident status of an alien who was not in fact eligible for such status or has been convicted of any felony or three or more misdemeanors committed in the United States. Section 245A(b)(2)(A)-(B) of the Act, 8 U.S.C. § 1255a(b)(2)(A)-(B).

"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).

"Conviction" is defined under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) as a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The applicant's record contains a copy of his California Department of Motor Vehicles driver license incident report dated May 2, 1988. This report provides that the applicant has been convicted of the following misdemeanor offenses:

- On November 4, 1982, the applicant was convicted of *Driving Under the Influence of Alcohol or Drugs* in violation of sections 23152(a) and 23152(b) of the California Vehicle Code (Docket # [REDACTED]);
- On September 26, 1986, the applicant was convicted of *Violation of a Promise to Appear* in violation of section 40508(a) of the California Vehicle Code (Docket # [REDACTED]).

- On October 15, 1987, the applicant was convicted of *Reckless Driving* in violation of section 23103 of the California Vehicle Code (Docket [REDACTED]); and
- On April 7, 1988, the applicant was convicted of *Violation of a Promise to Appear* in violation of section 40508(a) of the California Vehicle Code (Docket # [REDACTED]).

On February 7, 1990, the director issued a notice of intent to terminate the applicant's status as a temporary resident based on these misdemeanor offenses. The director afforded the applicant 30 days to submit court dispositions to overcome this finding of ineligibility.

On April 23, 1992, the director issued a notice of termination to the applicant. The director determined that the applicant failed to respond to the notice of intent to terminate. On this basis, the director ordered the termination of the applicant's status as a temporary resident.

On appeal, the applicant asserts that he did not receive a notice indicating the reasons for the termination. The applicant asserts that he mailed a change of address card. The applicant requests a duplicate of the notice and an extension of time to gather the needed information.

The applicant's record contains a Form I-697A, Change of Address Card for Legalization, postmarked November 28, 1989. On this card the applicant provided his address as [REDACTED] Union Gap, WA 98903. The director sent the notice of intent to terminate to the applicant at this address, which was the applicant's last address of record at that time. The applicant was afforded 30 days to provide additional evidence to overcome the intended basis for termination. However, the applicant neglected to respond to this notice. The director accordingly terminated the applicant's status as a temporary resident.

Pursuant to section 245A(a)(4)(B) of the Act, 8 U.S.C. § 1255a(a)(4)(B), an applicant for temporary resident status must establish that he has not been convicted of any felony or three or more misdemeanors committed in the United States. The applicant filed his Form I-687 Application for Status as a Temporary Resident on May 17, 1988. The applicant submitted with his application a copy of his California Department of Motor Vehicles driver license incident report dated May 2, 1988, which indicates that he has been convicted of the above misdemeanor offenses. Additionally, the applicant's record contains a Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints, dated February 3, 1989. This report reveals that on May 10, 1983, the applicant was arrested and charged with misdemeanor violations of section 14601(a) of the California Vehicle Code for *Driving When Privileges Suspended or Revoked for Certain Offenses* and section 496 of the California Penal Code for *Receiving Stolen Property* (Sheriff's Office Santa Ana Case [REDACTED]).<sup>1</sup> The report also reveals that on August 21, 1985, the applicant was arrested by the Garden Grove, California, Police Department and charged with a misdemeanor violation of section 272 of the California Penal Code for *Causing, Encouraging or Contributing to the Delinquency of Persons Under 18 years* (Sheriff's Office Santa Ana Case #501802). The applicant has not provided any court dispositions related to his arrests for these

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<sup>1</sup> The FBI report indicates that these charges were dismissed on November 4, 1983.

misdemeanor offenses. Despite the applicant's failure to overcome this evidence of ineligibility, he was approved for temporary resident status on April 12, 1989.

It should be noted that the applicant's record contains an updated FBI report, dated September 5, 2007. This report reveals that on October 31, 1992, the applicant was arrested and charged with misdemeanor violations of section 46.61.502 of the Washington Motor Vehicles Code for *Driving While Under Influence of Intoxicating Liquor or Drug* and section 46.20.342 of the Washington Motor Vehicles Code for *Driving While License Suspended or Revoked* (Police Department Richland, Washington Case #21091). Again, the applicant has not provided any court documents related to this arrest. Therefore, the final disposition of the charges remains unknown.

In conclusion, evidence in the record shows that at the time the Immigration and Naturalization Service (the Service) granted the applicant temporary resident status he had been convicted of four misdemeanor offenses and charged with three other misdemeanor offenses. Since the applicant failed to submit any court dispositions to overcome this evidence of ineligibility, he was at that time ineligible for temporary resident status under section 245A(a)(4)(B) of the Act, 8 U.S.C. § 1255a(a)(4)(B). As noted, the applicant has since been arrested and charged with two additional misdemeanor offenses. The status of an alien lawfully admitted for temporary residence under section 245A of the Act may be terminated at any time upon a determination that the alien was ineligible for temporary residence under section 245A of the Act or the alien has been convicted of any felony or three or more misdemeanors. 8 C.F.R. § 245a.2(u)(i), (iii). Under section 245A of the Act, there is no waiver available to an alien convicted of three or more misdemeanors committed in the United States.

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