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



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
WAC-05-107-51031

Office: LOS ANGELES

Date: **OCT 31 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Adjust from Temporary to Permanent Resident Status pursuant to Section 245A of the Immigration and Nationality Act.

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application to adjust status from temporary to permanent resident status pursuant to section 245A of the Immigration and Nationality Act was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

On September 11, 2006, the director denied the application because the applicant failed to submit final court dispositions for all of his arrests following the issuance of a Form I-72 Request for Evidence specifically requesting the final court dispositions, which was issued to the applicant following his June 20, 2006 interview with Citizenship and Immigration Services (CIS). On appeal, the applicant contends that on July 26, 2006 he submitted a "Certification of No Record" from the County of San Bernardino, Superior Court of California, which was within the time period provided by the Form I-72 Request for Evidence and which satisfies his burden of proof.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e). Furthermore, the statutory language at section 245A(b)(1)(C) of the Act provides that the alien "*must establish* that he is (i) is admissible . . . and (2) *has not been convicted* of any felony or 3 or more misdemeanors." *See also* Section 1104(c)(2)(D) of the LIFE Act.

On June 20, 2006 the applicant was interviewed in by CIS in connection with his application to adjust from temporary resident status to permanent resident status pursuant to Section 245A. At the conclusion of the interview, the applicant was issued a Form I-72 request for evidence. Specifically, the applicant was asked to provide the final court dispositions for his arrests on August 24, 1983, June 11, 1989 and October 31, 1998.

CIS requested the records because the record contains a FBI report based upon the applicant's fingerprints, indicating that the applicant has the following criminal history:

- On August 24, 1983, the Norwalk Sheriff's Office charged the applicant with battery on a person;
- On June 11, 1989, the Norwalk Sheriff's Office charged the applicant with infliction of corporal injury to a spouse/cohabitant in violation of Section 273.5(a) of the California Penal Code. The applicant was convicted of the charge in the Compton Municipal Court;
- On December 9, 1991 and again on October 31, 1998, the Norwalk Sheriff's Office charged the applicant with violations of Section 273.5(a) PC.

In response to the CIS request, on July 20, 2006 the applicant submitted an undated search request from Superior Court of California, County of San Bernardino, San Bernardino District. Noting that the evidence submitted was not a final court disposition, CIS granted the applicant additional time to provide the requisite documents, until July 28, 2006.

On July 26, 2006, the applicant submitted a "Certification of No Record," from the Superior Court of California, County of San Bernardino, indicating that there was no criminal record for the applicant in the San Bernardino Superior Court Central District. The certification was accompanied by a notice that the court is only required by law to keep criminal information on misdemeanors for a period of ten years plus probation, and that if the court records are no longer available, the applicant may contact the California Department of Justice, Bureau of Criminal Identification. On August 15, 2006, the applicant wrote to the California Department of Justice, Bureau of Criminal Identification requesting the release of his past arrest records, however, no additional evidence or records have been submitted to CIS.

As stated above, the applicant bears the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section.

Since the applicant has submitted a California criminal record "unavailability letter" and no secondary evidence or affidavits which explain the reasons for the unavailability, then the applicant has not met the requirements of 8 C.F.R. § 103.2(b)(2)(i) and (ii) or his burden of proof and the appeal must be dismissed.

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