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APR 30 2009

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:
SRC 03 239 53142

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Temporary Resident 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The director terminated the applicant's temporary resident status because the applicant has three misdemeanor convictions.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). "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).

The record before the AAO reveals that the applicant was convicted of the following misdemeanor violations of the California Vehicle Code: one count of violating section 23152(B)– *Drive Vehicle with Blood Alcohol in excess of .08%* (No. [REDACTED], February 17, 1995); one count of violating section 14601.5(A) – *Driving with Suspended License* (No. [REDACTED], April 21, 1997); and one count of violating section 12500(A) – *Unlicensed Driver* (No. [REDACTED] June 19, 2001).

The applicant is represented by counsel on appeal. Counsel asserts that “there is no final order as to a third conviction.” Counsel maintains that the applicant remains eligible for temporary resident status.

The AAO has reviewed all of the documents in the file and concludes that the evidence confirms that the applicant has three misdemeanor convictions. The evidence of the convictions includes the minute orders for all three criminal incidents issued by the Municipal Court of the Metropolitan Courthouse Judicial District, County of Los Angeles, State of California, and the Superior Court of California, County of Los Angeles.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5).

The applicant stands convicted of three misdemeanors. He is therefore ineligible for temporary resident status pursuant to 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). No waiver of such ineligibility is available. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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