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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE:

[REDACTED]
XRW-88-517-1036

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 06 2009**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "J. Grissom".

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: On May 4, 1988, the applicant filed an application for temporary resident status pursuant to section 245A of the Immigration and Nationality Act (Act). The applicant was initially approved. On August 15, 1991 the director, California Service Center, terminated the applicant's temporary resident status because the record indicated that the applicant had three disqualifying misdemeanor convictions. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period, that he has no disqualifying criminal convictions and is thus otherwise admissible to the United States. Here, the applicant has failed to meet this burden because of his multiple 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 temporary resident status. 8 C.F.R. § 245a.2(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 on April 24, 1989 of one count of violating section 23152(A) of the California Vehicle Code – *Driving Under the Influence*, and one count of violating section 12500(a) of the California Vehicle Code – *Operating Motor Vehicle Without Valid License*. Both offenses are listed as misdemeanor violations under the California Vehicle Code.

The director issued a Notice of Intent to Deny (NOID) on June 4, 1991, stating that the applicant's temporary resident status was in jeopardy of termination because additional information revealed that he was also convicted in April, 1981 for causing a traffic accident resulting in injury or property damage in excess of \$500. Having received no response to the NOID, the director terminated the temporary resident status on August 15, 1991.

The AAO notes that the record contains a photocopy of a letter dated October 25, 1983 from the Municipal Court of California, Southeast Judicial District, addressed to the California Department of Motor Vehicles. The letter requests that the 1981 conviction, be removed from the applicant's motor vehicle record, as the conviction pertains to another individual with the same name.

Thus, the director erroneously terminated the applicant's temporary resident status because the applicant did not, at the time, have three disqualifying misdemeanor convictions. However, in adjudicating the appeal, the AAO finds that evidence of additional criminal violations had come to light. In a letter dated June 15, 2009, the AAO requested that the applicant address the additional criminal convictions. The applicant submitted no response to the letter of June 15, 2009.

The list of charges that have been brought against the applicant for which no evidence of a final disposition appears include:

- 1) An arrest by the Santa Ana Police Department on or about July 28, 1992 for one count of violating section 246 of the California Penal Code – *shooting at an inhabited dwelling or vehicle*.
- 2) An arrest by the Santa Ana Sheriff's Department on or about October 4, 1999 for one count of battery against a spouse.
- 3) An arrest by the Santa Ana Sheriff's Department on or about May 19, 2000 for one count of battery against a spouse and for one count of violating the terms of probation.

The record indicates that the applicant has three misdemeanor criminal offenses which remain unexplained on appeal despite a notice to the applicant to provide a final disposition for all arrests and convictions. Therefore, the applicant has not met his burden of proof to establish eligibility for temporary resident status. He is therefore ineligible for temporary resident status pursuant to 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). The decision of the director is affirmed.

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