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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

**U.S. Citizenship  
and Immigration  
Services**

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[Redacted]

FILE: [Redacted]  
XAH-88-010-7046

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 12 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:

[Redacted]

**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 remanded for further action, you will be contacted.

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Western Service Center, terminated the applicant's temporary resident status. An appeal of that decision was dismissed by the Legalization Appeals Unit (LAU). This matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be rejected.

The Director terminated the applicant's temporary residence because the record reflected that he had been convicted on August 6, 1984 of the *Sale/Transportation of Heroin* in violation of section 11352 of the California Health and Safety Code. On appeal, the applicant asserted that he was not the individual who was arrested for the drug offense. The LAU determined that the documentation furnished by the applicant established that he is not the individual convicted of the August 6, 1984 drug offense. However, the LAU dismissed the appeal because the applicant's Department of Motor Vehicles record revealed he had three misdemeanor convictions.

This matter is now before the AAO pursuant to the applicant's request for a motion to reopen. Although motions to reopen a proceeding or reconsider a decision shall not be considered under Section 245A of the Act, the AAO may *sua sponte* reopen and reconsider any adverse decision. See 8 C.F.R. § 245a.2(q).

The applicant, through counsel, asserts that the LAU's conclusion is plainly erroneous. The applicant contends that his California Department of Motor Vehicles record shows that he has two DUI (driving under the influence) convictions. The applicant states that his third conviction, for failing to display a license plate, is an infraction, not a misdemeanor.

The temporary resident status of an alien may be terminated upon the occurrence of any of the following: (i) It is determined that the alien was ineligible for temporary residence under section 245A of the Act; (ii) The alien commits an act which renders him or her inadmissible as an immigrant, unless a waiver is secured; (iii) The alien is convicted of any felony, or three or more misdemeanors; and (iv) The alien fails to file for adjustment of status from temporary resident to permanent resident within 43 months of the date he/she was granted status as a temporary resident. 8 C.F.R. § 245a.2(u).

A review of the record of proceedings reveals that on May 19, 2008, the applicant pled guilty to *Conspiracy to Possess with Intent to Distribute More than 5 Kilograms of Cocaine* in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(A) (United States District Court Southern District of [REDACTED]). The applicant was sentenced to a term of imprisonment for 188 months.

The applicant's conviction is a felony that renders him ineligible for temporary resident status. See 8 C.F.R. §§ 245a.1(p) and 245a.2(u). He is also inadmissible to the United States under section 212(a)(2)(A)(i)(II) as an alien who has been convicted of a controlled substance offense. 8 U.S.C. § 1182(a)(2)(A)(i)(II). There is no waiver available for this ground of inadmissibility. See

Section 245A(d)(2)(B)(ii)(I) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(I). Therefore, the AAO's decision to dismiss the appeal stands, and the motion to reopen must be rejected.

**ORDER:** The motion is rejected.