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U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE: XPE 80 601 00635 Office: VERMONT SERVICE CENTER Date: NOV 04 2009

IN RE: Applicant: 

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to section 245A of the Immigration and Nationality Act (Act) was denied by the Eastern Service Center. The Director, Eastern Service Center, reopened and again denied the application. The appeal will be dismissed.

The director initially denied the application for lack of prosecution because the applicant failed to appear for an interview regarding his application for temporary residence under Section 245A of the Act. On appeal, the applicant asserted that he missed his interview because he had moved to California. The director reopened the matter and again denied the application because the applicant failed to submit any documentation in support of his application.

The case was forwarded to the Administrative Appeals Office (AAO) for consideration. The AAO issued a request for additional evidence (RFE). The applicant failed to respond to the RFE.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for 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).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Act.

The results of the applicant's FBI fingerprint check dated January 24, 2004, reveals the following criminal history record:

- 1) An arrest by the Bell Gardens Police Department on or about May 20, 1986 for possession of heroin for sale.
- 2) An arrest by the Los Angeles Police Department on or about February 8, 1989 for possession of marijuana hashish for sale.
- 3) An arrest by the Norwalk, California Sheriff's Office on or about May 27, 1997, for one count of violating section 273A of the California Penal Code – *inflicting corporal injury on a spouse or cohabitant.*
- 4) An arrest by the Norwalk, California Sheriff's Office on or about April 26, 1999, for one count of violating section 273A of the California Penal Code – *inflicting corporal injury on a spouse or cohabitant.*

On August 5, 2009, the AAO requested the applicant to submit final court dispositions for all of the above offenses. The AAO also issued the following instructions:

If the court disposition is not available, you must obtain a certified letter from the court indicating the reason. If the arrest charge was not filed in any court, obtain a certified letter from the arresting agency indicating the final disposition of the arrest(s). If you are not able to obtain any of these documents, you must obtain police clearance letters from all cities and counties in which you have lived for the past five (5) years.

The applicant failed to respond to the request and failed to submit the requested court dispositions. For this reason alone, the application cannot be approved. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. 8 C.F.R. § 103.2(b)(12). Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by the United States Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 245A(a)(4)(A) of the Act and that he or she has not been convicted of any felony or of three or more misdemeanors. 8 C.F.R. § 245A.2(c)(1). Based on the evidence of record, the applicant has failed to establish that he is eligible for adjustment to temporary resident status.

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