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

U.S. Citizenship
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OCT 13 2009

FILE:

XES 88 087 02055

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



APPLICATION:

Application for Temporary Resident Status under 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 remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director, California Service Center, denied the application for temporary resident status (Form I-687) filed pursuant to section 245A of the Immigration Reform and Control Act, 8 U.S.C. § 1255a. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The director denied the application for temporary residence because the applicant had multiple criminal convictions in the state of California, including two misdemeanor convictions for battery and reckless driving, and two felony convictions for possession of controlled substances for sale. The director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a.

The applicant represents himself on appeal. The applicant requests that his application for temporary resident status be granted on humanitarian grounds. He asks forgiveness for “all the felonies and for all the misdemeanor (sic).” The applicant does not challenge the nature of his criminal convictions.

An adverse decision on an application for temporary resident status may be appealed to the AAO; the appeal with the required fee must be filed within 30 days after service of the notice of denial. 8 C.F.R. § 245a.2(p). If the decision, or notice of denial, was mailed, the applicant is afforded an additional three days, and the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). An appeal that is not timely filed will not be accepted. 8 C.F.R. § 245a.2(p).

In this case, the applicant filed the Form I-687 on February 8, 1988. The director denied the application on August 12, 1993, on criminal grounds. The applicant was directed to file a Notice of Appeal (Form I-694) within 30 days of the notice of denial. The applicant filed the Notice of Appeal on September 17, 1993, which is 36 days after the issuance of the notice of denial. The notice of denial is therefore final and no further appeal rights are available.

However, the AAO notes that had the applicant filed a timely Notice of Appeal, the evidence in the record clearly establishes that the applicant is not eligible for temporary resident status on account of his criminal convictions. These convictions include two 1973 felony convictions for possession of marihuana for sale (section 11530.5 Calif. Health and Safety Code); and possession of barbituric acid derivative for sale (section 11911 Calif. Health and Safety Code), [REDACTED]. Additionally, the record includes a 1983 misdemeanor conviction for battery (section 242 Calif. Penal Code), Docket no. 15154, and a second 1985 misdemeanor conviction for battery (section 242 Calif. Penal Code), [REDACTED].

FBI documents list a series of additional arrests for which no final disposition exists in the record, including shoplifting (1993), theft (2000 and 2005), and DUI (2006). The FBI documents also reveal a conviction for burglary in 1995 for which the applicant was sentenced to 180 days in jail with 24 months probation, as well as an additional conviction for burglary in 1997 for which the applicant’s earlier probation was revoked and a sentence of incarceration was

reinstated. An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to temporary resident status. 8 C.F.R. § 245a.2(c)(1).

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