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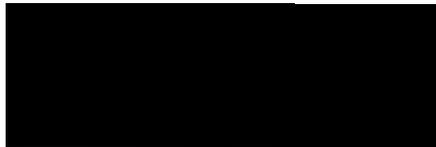
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090



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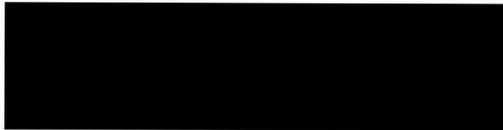
Office: CALIFORNIA

Date:

OCT 28 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. 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 application for temporary resident status was denied by the Director, Western Service Center. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to submit the request court dispositions

On appeal the applicant submits a letter from the Municipal Court in Compton, California, which indicated that the records have been purged.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulation provides relevant definition at 8 C.F.R. 245a.2(c)(1).

“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 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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

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 FBI report reflects that on August 16, 1977, the applicant was arrested by the Sheriff's Office in Los Angeles, California for hit and run causing death or injury, a violation of section 20001 VC, a felony. On November 1, 1977 the applicant was convicted of this offense. The applicant was ordered to pay a fine and was placed on probation for 18 months. [REDACTED]

The FBI report also reflects that on November 26, 1987, the applicant was arrested by the Sheriff's Office in Los Angeles, California for inflicting corporal injury upon a spouse, a violation of section 273.5(a) PC. On January 6, 1988, the charge was dismissed. [REDACTED]

On February 2, 1989, the applicant was requested to submit the court dispositions for all arrests including the arrest on August 16, 1977. The applicant, however, failed to respond to the notice, and on May 27, 1993, the director denied the application.

On appeal, the applicant submits a court document from the Compton Municipal Court, indicating that all record have been purged.

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. The applicant has the burden to establish with *affirmative evidence* that the offense was either dismissed or was in error.

The record also reflects that on or about November 2, 1988, the applicant was arrested by the Sheriff's Office in Santa Ana, California for possession of a narcotic controlled substance, a violation of section 11350 H&S, possession or a narcotic controlled substance for sale, a violation of section 11351 H&S, and transportation/sale of a narcotic controlled substance, a violation of section 11352 H&S. Court documentation from Orange County Superior Court, reflects that on January 31, 1989, the applicant was convicted of conspiracy to commit crime, a violation of 182.1 PC /11352 H&S /11351 H&S; possession or a narcotic controlled substance for sale, a violation of section 11351 H&S, and transportation/sale of a narcotic controlled substance., a violation of section 11352 H&S. On April 11, 1989, the court imposed a five-year consecutive sentence for enhancement pursuant to section 11370.4(a)(2) H&S for violating section 11352 H&S. Execution was stayed for the remaining offenses. [REDACTED]

The applicant has failed to establish he is admissible due to his failure to provide the requested documentation for the arrest on August 16, 1977, necessary for the adjudication of the application. The applicant is ineligible for temporary resident status because of his felony drug convictions. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug convictions.

Section 101(a)(43)(B) of the Act states the term "aggravated felony" means illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substance Act), including drug trafficking crime (as defined in section 924(c) of title 18, United States Code). In the instant case, the applicant is an aggravated felon as he was convicted of violating section 11352 H&S,

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

Finally, it is noted that the record reflects that on January 8, 1991, the applicant was ordered deported from the United States. The Form I-205, Warrant of Deportation, reflects that the applicant departed via foot at Calexico Port of Entry on January 8, 1991. The record further reflects that the applicant attempted to reenter the United States on December 11, 2004 and was ordered removed. The Form I-296 reflects that the applicant departed via foot on December 11, 2004 at San Ysidro, California.

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