

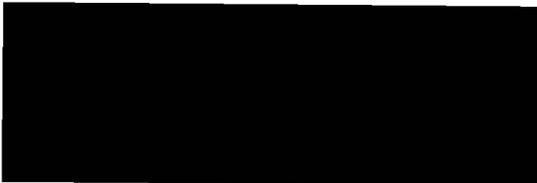
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
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U.S. Citizenship  
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Services



LD

FILE: [REDACTED]  
XHU 88 174 7091

Office: HOUSTON

Date: SEP 03 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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the director, Houston, is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on October 18, 1989. The director terminated the applicant's temporary resident status on July 11, 2007, because the applicant did not apply for permanent resident status (Form I-698) within the allotted period of time. The director also terminated the applicant's temporary resident status because the applicant has three arrests and/or convictions for misdemeanor offenses in the state of Texas.

The applicant represents himself on appeal. He states that he did not receive the Notice of Intent to Terminate issued by the director on May 17, 2007. In support of the appeal, the applicant now submits evidence of identity: a driver's license, employment authorization card, parole authorization issued by the district director, and a translated copy of his birth certificate. The applicant also submits a photocopy of his federal tax return for 2006. The applicant does not address his criminal record.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv). The applicant was granted temporary resident status on October 18, 1989. The 43-month eligibility period for filing for adjustment expired on May 18, 1993.

The applicant for permanent resident 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 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).

Additionally, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(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 AAO has reviewed all of the documents in the file in their entirety and we agree with the director's analysis of the evidence. Initially, we observe that the applicant's statement on appeal that he did not receive the Notice of Intent to Terminate dated May 17, 2007 is not credible. The record before the AAO confirms that the Notice of Intent to Terminate was mailed to the same address as the ultimate letter of termination dated July 11, 2007. We also note that the Notice of Appeal (Form I-694) was timely filed and lists the same address as contained in both prior Notices issued by the district director. Therefore, we affirm the director's finding that the applicant failed to file an application for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident, in this case, on or before May 18, 1993.

Regarding the applicant's criminal record, the file contains a printout identified as, "Texas Department of Public Safety Computerized Criminal History." This document reveals that the applicant was arrested by the Houston Police Department on May 24, 1992, and charged with *driving under the influence of alcohol (DUI)*. The record reveals no final disposition for this arrest.

This document also lists a second arrest for the same offense on March 7, 1993 by the Houston Police Department. This particular incident is identified as a violation of section VCS 67011-1(c) and is listed as a Class A misdemeanor. The applicant was convicted for *DUI* on April 5, 1993, and sentenced to 90 days in jail and ordered to pay a fine of \$100. The record states also that the applicant was additionally charged with a violation of VCS 6687B-(34)(A) – *driving with a suspended license*. This charge is identified as a Class B misdemeanor. The applicant pleaded nolo contendere to this charge and was sentenced concurrently to 90 days in jail and ordered to pay a fine of \$100. The applicant was simultaneously charged with a *moving traffic violation*, listed as a Class B misdemeanor. The record does not identify a final disposition for this offense.

Having reviewed all of the evidence in the record, the AAO concludes that the applicant has at least two misdemeanor convictions for driving with a suspended license and for *DUI*, as well as an additional arrest for *DUI* that remains unexplained on appeal. The applicant has submitted no court certified record of final disposition for this offense.

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 Lawful Permanent Resident status. 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 such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p).

In this case, the evidence of record establishes that the applicant has at least two misdemeanor convictions, and one additional arrest for a third misdemeanor offense. The applicant failed to meet his burden of proof to establish eligibility for temporary resident status.

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