

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

L1



FILE:

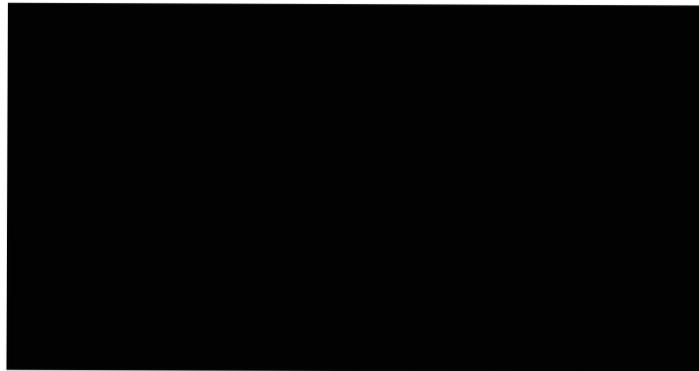


Office: LOS ANGELES

Date: JUL 06 2010

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 termination of the applicant's temporary resident status by the Director, Los Angeles, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on March 25, 1992 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident within forty-three (43) months of receiving his temporary resident status. See 8 C.F.R. § 245a.3(b)(1). Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence.

In this case, the applicant has not yet filed his application to adjust status from temporary to permanent resident, and the 43-month filing period has lapsed. The director properly issued a Notice of Intent to Terminate the applicant's temporary status, and subsequently terminated his temporary status, as the applicant failed to timely file the Form I-698 application to adjust status from temporary to permanent resident.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner, will be summarily dismissed.

Beyond the decision of the director, the record before the AAO reveals that the applicant has multiple criminal convictions, and is ineligible for the benefit. 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). "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 term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record reflects the following arrests and convictions of the applicant:

- On September 18, 2009 the applicant was convicted of violating California Penal Code (PC) 245(a)(1), *Assault with a Deadly Weapon*, a misdemeanor offense.
- On March 24, 2003, the applicant was charged with *obstructing a public officer, resisting arrest, and urinating or evacuating in public view*. On March 26, 2003, he was convicted of violating Santa Ana Municipal Code 10-34, *Urinating or Evacuating in Public View*, a misdemeanor offense; and of violating PC 148(a)(1), *resisting public or peace officer*, a misdemeanor offense.
- On December 16, 2000 the applicant was arrested and charged by the Santa Ana Police Department with *disorderly conduct and under the influence of drugs* [REDACTED]. The record does not reflect the disposition of these charges.
- On December 23, 1996 the applicant was arrested and charged by the Santa Ana Sheriff's Office and was subsequently convicted of *commitment hit and run with property damage* [REDACTED]. The record indicates that he was convicted of the charge.
- On December 23, 1992 the applicant was arrested and charged with *petty theft* by the Santa Ana Sheriff's Office [REDACTED]. The record does not reflect the disposition of this charge.
- On October 22, 1991 the applicant was arrested and charged with *petty theft* by the Santa Ana Sheriff's Office. He was convicted in the Superior Court of Santa Ana of violating PC section 488, *Petty Theft*, a misdemeanor offense [REDACTED].

The applicant stands convicted of at least three misdemeanors. He is therefore ineligible for temporary resident status pursuant to 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). No waiver of such ineligibility is available. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis as well. For this additional reason, the applicant's status was properly terminated.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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