

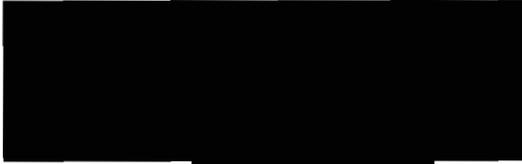
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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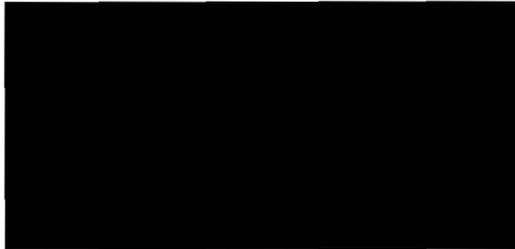
Office: FRESNO

Date:

MAR 23 2010

IN RE:

Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director, Fresno, denied the applicant's application to adjust from temporary to permanent resident status pursuant to section 245a of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant failed to establish his admissibility and his eligibility for the benefit sought. The director noted that he had previously issued a request for evidence, i.e. certified final court dispositions for two arrests: forcible rape and petty theft. The director stated that the applicant had failed to respond to the request for evidence and accordingly, denied the application.

On appeal, the applicant submits evidence that he asserts shows the charge for petty theft was dismissed on August 1, 2000 and the felony charge for forcible rape was dismissed on February 5, 2001.

The issue in this proceeding is whether the applicant has established his eligibility for adjustment from temporary resident to permanent resident status pursuant to section 245A of the Act. The AAO has reviewed the evidence of record, including the applicant's criminal record, and concludes that the applicant has not met his burden of proof to establish his eligibility for adjustment to permanent resident status.

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).

According to evidence in the record, the applicant has the following record:

- The Fresno Police Department arrested the applicant on May 18, 1994 and charged him with violating section 488 of the California Penal Code (PC), *petty theft*. [REDACTED] The charge was dismissed on August 1, 2000.
- On September 4, 1998, the applicant was convicted of violating section 12500(a) of the California Vehicle Code, *unlicensed driver*, a misdemeanor. [REDACTED]
- The Fresno Police Department arrested the applicant on July 17, 2000 and charged him on two counts: *rape by force* in violation of section 261(a)(2) PC, a felony; and *sex penetration*,

foreign object with force in violation of section 289(a)(1) PC, a felony. The charges were subsequently dismissed due to a lack of *corpus delecti*. The prosecution could not locate the victim and could not proceed without her testimony.

- The Fresno Police Department arrested the applicant on July 17, 2000 and charged him with violation of section 270 PC, *failure to provide child support*, a misdemeanor. He pled guilty on April 24, 2000. [REDACTED]
- On March 9, 2006, the applicant was convicted of violating section 14601.1(a) of the California Vehicle Code, *driving when privilege suspended or revoked*, a misdemeanor. Case [REDACTED]

The applicant stands convicted of three misdemeanors. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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