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



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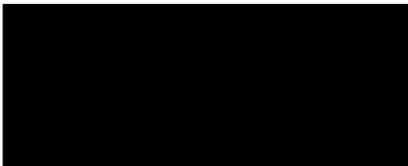
IN RE:

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 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.

Elizabeth M. McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Texas Service Center, and an appeal was sustained. The director reopened the matter and again denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he determined that the applicant had been convicted of three or more misdemeanors.

On appeal, counsel asserts that the applicant was never convicted in U.S. District Court for the Southern District of Texas for an entry without inspection.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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).

In the present matter, certified court records from the District Court of Harris County, Houston, Texas, reveal that the applicant was convicted of the following offenses:

1. On September 12, 1988, the applicant was convicted under section 2 of Part 18 of the United States Code, *principal: conspires, aids, or willfully cause criminal act to be done* and 8 U.S.C. § 1325, *improper entry by an alien*;
2. On May 19, 1992, the applicant was convicted of *theft \$20-\$200*, a class B misdemeanor, docket [REDACTED]. He was sentenced to six days in jail.
3. On August 14, 1998, the applicant was convicted of *indecent exposure* [statute section not provided], a class B misdemeanor, docket [REDACTED]. He was sentenced to eight days in jail.

4. On October 7, 2002, the applicant was convicted of *failure to identify oneself to a peace officer* [statute section not provided], a class C misdemeanor, docket # [REDACTED]. He was fined \$200. This conviction is not considered a misdemeanor as defined in the Act.

Regarding the 1998 convictions, counsel asserts that the burden of proof should shift to USCIS when the federal court has indicated that the applicant's case disposition has been destroyed.

The burden of proof is on the applicant to establish his eligibility for permanent resident status. The AAO concludes that the applicant has been convicted of at least three misdemeanors. He is therefore ineligible for adjustment to permanent resident status under section 245A(b)(1)(C) of the Act.

ORDER: The appeal is dismissed.