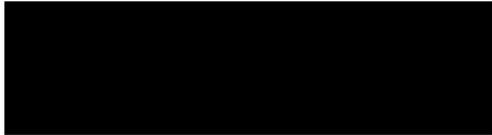


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, D.C. 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



L1

Date: **JUN 22 2011** Office: PHOENIX

FILE: 

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. All documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

*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, Phoenix, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of a felony. On appeal, counsel states that the director erred in denying the application.

United States Citizenship and Immigration Services (USCIS) records indicate that the Form I-687 application for temporary residence was approved and the applicant subsequently timely filed the Form I-698 application to adjust from temporary to permanent residence. The director denied the Form I-698 application.

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 record reveals that the applicant has the following criminal history:

On [REDACTED], in the Superior Court of [REDACTED], the applicant was convicted of Attempted Possession of a Dangerous Drug for Sale, to wit: Methamphetamine, a class three felony, in violation of [REDACTED] Revised Statutes (RS) s [REDACTED] committed on [REDACTED]

On [REDACTED] the applicant was arrested and charged with violating [REDACTED], a misdemeanor, *driving while intoxicated*.

On [REDACTED] the applicant was arrested and charged with *making a false claim to United States Citizenship*.

On March 14, 1993, the applicant was arrested on an unknown charge.

On September 24, 1997, the applicant was charged with *possession of stolen property* and two traffic offenses.

The applicant stands convicted of one felony. 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.