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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, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: MAR 03 2011

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Los Angeles. The decision 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 arrested and charged with at least four misdemeanor offenses. The director issued a Notice of Intent to Deny (NOID) the application providing the applicant an opportunity to submit the final court dispositions of all arrests. In response, the applicant submitted a letter from the State of California Department of Justice dated July 10, 2006 indicating that no criminal record was found. However, the search only included the time period from January 1997 until July 2006 and therefore, was incomplete. Noting that the applicant failed to establish that he had not been convicted of three or more misdemeanors, the director denied the application on June 24, 2008.

On appeal, the applicant submits that the requested information is unavailable. He indicates that the California Department of Justice report covers all relevant criminal activity and that the offenses listed on the report do not render the applicant ineligible for temporary resident status.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). 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).

The record contains a second letter from the California Department of Justice dated April 24, 2008 indicating that the applicant was arrested on October 30, 1987 and subsequently convicted for *False Identification to a Peace Officer*, section 148.9 of the California Penal Code (CPC) (Case no. [REDACTED]). He was arrested for the same offense on March 8, 1992, and subsequently convicted (Case No. [REDACTED]) and again on June 3, 1992 (Case no. [REDACTED]) and subsequently convicted.

The record also contains a letter from [REDACTED] indicating that the applicant was arrested for *Driving under the Influence*, section 23152(a) of the California Vehicle Code (CVC), on December 22, 1982 and again on February 9, 1984. While the final court dispositions for these arrests have not been submitted, the applicant testified under oath on September 18, 2007 that he had been arrested for *Driving Under the Influence* in 1981, 1983 or 1984 and in 1992 and that he had been fined for each offense. Furthermore, the applicant admitted the charges noted above for *False Identification to a Peace Officer*.

Therefore, the applicant's multiple misdemeanor convictions render him ineligible for temporary resident status. Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, *and is otherwise eligible for adjustment of status under this section*. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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