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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**



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Date: OCT 18 2011

Office: Texas Service Center

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 McCormack

Perry Rhew
Chief, Administrative Appeals Office

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

The director denied the application, finding the applicant had failed to respond to a notice of intent to deny his application (NOID).

On appeal, counsel asserts that the applicant's conviction for the purchase of a controlled substance was more than 20 years ago and that the purchase was for less than two ounces of cannabis. He further asserts that the applicant successfully completed probation.

United States Citizenship and Immigration Services (USCIS) records indicate that the applicant's Form I-687 application for temporary residence was approved on December 12, 1989. USCIS subsequently terminated the applicant's temporary resident status. The applicant filed the Form I-698 application to adjust from temporary to permanent residence. The director issued a NOID, finding that the applicant plead *nolo contendere* to the charge of purchasing cannabis, a third degree felony under the Florida statute.

According to the evidence in the record, the applicant was arrested on October 27, 1989 and charged on two counts. The first count was for the *purchase of cannabis* in violation of section 893.13(1)(a) of the Florida Statutes. The second count was for *possession of cannabis* in violation of section 893.13(1)(g) of the Florida Statutes. On December 13, 1989, the applicant pled *nolo contendere* to the offense of *purchase of cannabis* and was placed on probation for one year. 9th Judicial Circuit, Orange County, Florida Case No. [REDACTED]

Counsel for the applicant asserts that the applicant's conviction was for the purchase of less than two ounces of marijuana. The statute provides that a conviction for a single offense for simple possession of 30 grams or less of marijuana is not a deportable offense. Section 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(b)(i). As the conviction in this case was for the purchase of cannabis, not simple possession, the exception would not apply. Further, two ounces of marijuana is more than 30 grams.¹ The applicant is ineligible for permanent resident status due to his felony conviction.

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

¹ Using a metric conversion calculator, two ounces equals 56.6990 grams. See, Metric Conversions.org, [REDACTED] on October 12, 2012.

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).

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.