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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: Office: TEXAS SERVICE CENTER
JAN 06 2012

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 was ineligible for temporary resident status due to his criminal history.

On appeal, counsel for the applicant asserts that the applicant was not convicted for the charges listed on the denial notice. Counsel further asserts that the applicant was never charged with auto theft and that he successfully completed his probation for his violation of New Mexico Statute Section 30-15-1, criminal damage to property.

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 an extensive arrest record including domestic violence charges, traffic violations, and a felony conviction. On April 15, 1990, the applicant was charged with one count of auto theft, and on July 30, 1990, the complaint was amended to include a charge of violating section 30-15-1 of the New Mexico Statutes Annotated, criminal damage to property over \$1,000.00, a 4th degree felony.

The record contains court documents and computer printouts that reflect the applicant pleaded guilty to the charge of criminal damage to property over \$1000, (a fourth-degree felony), in violation of [REDACTED] in the New Mexico District Court for [REDACTED] county with a docket number [REDACTED] on July 30, 1990. These documents show that imposition of sentence was deferred for 18 months and he was placed on probation for 18 months.

The applicant claims that he has not been convicted of a felony because the court issued a deferred adjudication. The record contains a copy of the Judgment and Probation Order reflecting that the applicant entered a plea of guilty to the charge cited in the previous paragraph on July 30, 1990.

However, the applicant does not address the effect of his guilty plea on the definition of conviction. Clearly, he meets the two prong test outlined in Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A). First, the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt. Second, the judge ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Specifically, the judge ordered the applicant serve 18 months probation.

Clearly, the applicant has been convicted under the statutory definition of this term provided at section 101(a)(48)(A)(i) of the Act. The record does not contain any evidence demonstrating that the applicant's conviction was subsequently expunged.

Although the record reveals that he successfully completed probation, he still stands convicted of a felony and is therefore ineligible for adjustment from temporary 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.