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



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **AUG 08 2013** Office: NEBRASKA SERVICE CENTER FILE: [Redacted]

IN RE: Applicant: [Redacted]

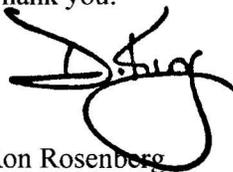
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you.


Ron Rosenberg
Acting Chief, Administrative Appeals Office

cc: Gibbs, Houston, Pauw

DISCUSSION: The Director, Nebraska Service Center (director), denied the application for temporary resident status and certified the decision to the Administrative Appeals Office (AAO). The AAO will affirm the director's decision and deny the application.

The applicant is a native and citizen of Mexico. On March 5, 1988, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act or INA), 8 U.S.C. § 1225a. The application for temporary resident status was denied, because it was determined that the applicant's May 17, 1983 departure pursuant to an order of deportation meant he failed to maintain the necessary continuous residence required by section 245A(g)(2)(b)(i) of the Immigration and Nationality Act (INA or Act) 8 U.S.C. § 1255a(g)(2)(b)(i).¹

The applicant filed a Motion to Reopen pursuant to the court's amended June 6, 2007 order in the class action *Proyecto San Pablo v. Department of Homeland Security*, No. CV 89-456-TUC-RCC (D. Arizona).²

On March 29, 2013, the director granted the applicant's Motion to Reopen, but denied the application and certified the matter to the AAO.³

On May 14, 2013, the AAO issued a Notice of Intent to Deny (NOID) regarding the I-687 application, informing the applicant of deficiencies in the record and providing him with an opportunity to respond. Specifically, the AAO requested that the applicant provide full criminal dispositions regarding the following criminal history:⁴

¹ On May 16, 1983, the Immigration Judge ordered the applicant to be deported to Mexico. On May 17, 1983, the applicant was deported from the United States.

² The AAO notes that the applicant's FOIA request, [REDACTED] was processed on December 20, 1997.

³ The AAO notes that the applicant's Form I-690, application for waiver of grounds of inadmissibility, was also denied on that date.

⁴ The NOID advised the applicant as follows:

The criminal charges listed above may disqualify you for temporary resident status. To complete the processing of your appeal, this office needs a certified copy of the court disposition relating to each of these charges and to any other criminal charges that may have been filed against you, in or outside the United States, for which you have not yet submitted the final court disposition.

Please obtain a court-certified copy of each of the relevant, final court dispositions and forward them to the return address at the top of this letter. Please address the letter to the Administrative Appeals Office, Legalization Branch Chief. Include a copy of this letter on top of your submission.

If the appropriate court no longer has records of the final dispositions of your court hearings or if the charges against you were dropped prior to trial, you must provide a certified copy of the court's finding that no court records exist for you. The search for court records must be

- On April 23, 1983, the applicant was arrested in Phoenix under the name [REDACTED] for a violation of the Arizona criminal code, *shoplifting*. On April 29, 1983 the applicant was apparently convicted of the charge, a misdemeanor. [REDACTED]
- On June 30, 1990, the applicant was arrested in Phoenix under the name [REDACTED] on two counts of a violation of the Arizona criminal code, *assault*. It appears that the applicant was convicted of one charge of assault, and the remaining charge was dismissed. It further appears that on May 3, 1993, the conviction was vacated pursuant to Arizona Revised Statute 13-907. [REDACTED]
- On October 14, 1994, the applicant was arrested in Phoenix under the name [REDACTED] for a violation of the Arizona criminal code, *assault*. The disposition of this arrest is not known. [REDACTED]
- On October 21, 1994, the applicant was arrested in Phoenix under the name [REDACTED] for a violation of the Arizona criminal code, *driving under the influence*. The disposition of this arrest is not known. [REDACTED]

Neither the applicant nor counsel responded to the NOID.

An alien applying for adjustment of status to that of temporary resident has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5).

conducted using your full name and any aliases that you may have used, as well as your date of birth.

Next, you must request a record of your arrests and the disposition of those arrests from the police department or other agency which arrested you and filed charges against you. Again, the relevant agency must conduct a search using either your fingerprints or your full name and any aliases that you have used in the past as well as your date of birth. If such records are also unavailable, you must provide an official letter of that from the arresting agency.

Finally, if arrest records are not available, you should make every effort to provide affidavits from two individuals who have direct knowledge of your arrests and the disposition of those arrests. These individuals should not be your family members. Also, provide for this office your own statement of what led to your arrests and any other arrests that you may have had, in or outside the United States, and the dispositions of those arrests whether they led to convictions, to acquittals or to a dismissal of charges prior to trial.

An alien is ineligible for temporary residence if he has been convicted of a felony, or three or more misdemeanors committed in the United States. *See* 8 C.F.R. § 245a.2(c)(1). There is no waiver of inadmissibility for an alien convicted of a felony, or three or more misdemeanors.

"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 issue in this proceeding is whether the applicant has established his eligibility for temporary resident status. Specifically, the applicant must demonstrate that his criminal history does not disqualify him for temporary resident status.

Declarations by an applicant that he or she has not had a criminal record are subject to a verification of facts by the United States Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. §245a.2(k)(5).

The AAO notes that, despite the request for evidence contained in the NOID, the applicant failed to provide final criminal dispositions for the arrests listed in the NOID and this deficiency has not been overcome on certification. Thus, the applicant has not met his burden of proof and his application must be denied on that ground.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Based on the evidence of record, the applicant has failed to establish that he is admissible; or is otherwise eligible for adjustment of status. Accordingly, the director's decision will be affirmed. The application will be denied.

ORDER: The director's March 29, 2013 decision is affirmed. The application is denied.