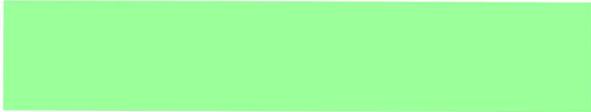


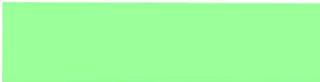
(b)(6)

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

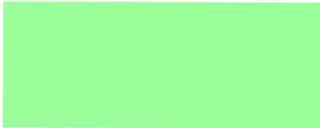


Date: **JUL 11 2013** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Applicant: 

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:



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.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 the application will be denied.

On May 3, 1988 the applicant filed a Form I-687, Application for Status as a Temporary Resident. The director denied the application, finding the applicant's November 27, 1984 departure pursuant to an order of deportation meant she 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).

On March 28, 2013, the director granted the applicant's Motion to Reopen, but denied the application and certified the matter to the AAO.²

On May 10, 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 her with an opportunity to respond. Specifically, the AAO requested that the applicant provide a full criminal disposition regarding her [REDACTED] arrest, under the name of [REDACTED] [REDACTED] for a violation of Kansas Statutes Annotated (K.S.A.) 65-4127a, *possession of heroin*.³

¹ On or about June 12, 1984, the Immigration Judge ordered the applicant to be deported should she not voluntarily depart by October 12, 1984. The applicant did not voluntarily depart the United States. On October 26, 1984, a warrant of deportation was issued, pursuant to which on November 20, 1984, the applicant was taken into custody. On November 27, 1984, the applicant was deported from the United States.

² The AAO notes that the applicant did not file a Form I-690, application for waiver of grounds of inadmissibility.

³ 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 conducted using your full name and any aliases that you may have used, as well as your date of birth.

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).

The issue in this proceeding is whether the applicant has established her eligibility for temporary resident status. Specifically, the applicant must demonstrate that her criminal history does not disqualify her for temporary resident status. In this case, the applicant has failed to meet this burden because she has failed to provide a final criminal disposition for her arrest on October 18, 1983 relating to possession of a controlled substance.

An alien is inadmissible if he or she has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1181(a)(2)(A)(i)(II).

In response to the NOID, the applicant provided an affidavit in which she stated the following:

I am submitting this AFFIDAVIT to attest that I have **NEVER** been arrested or convicted for POSSESSION of HEROIN and hereby request that the Department of Homeland Security (DHS) perform a fingerprint/biometrics check to verify the same, to clear my name, and my DHS record.⁴

Counsel has not submitted a brief or further evidence relevant to the grounds stated in the NOID.

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.

⁴ The applicant's affidavit is in a foreign language, for which the applicant has submitted an English translation. The regulation at 8 C.F.R. § 103.2(b)(3) states, "*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." There is no indication that the translation has been properly certified by the translator in the manner required by the regulation. Because the applicant failed to submit a certified translation of her affidavit, this evidence will not be accorded any weight in this proceeding.

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 finds that the applicant's affidavit is not sufficient to establish eligibility for temporary residence if other information in the record reveals an arrest record. If the evidence of an ultimate disposition is unavailable, the burden is on the applicant to submit credible, probative evidence of unavailability. Federal regulations provide that, in all applications or petitions for immigration benefits (temporary resident status in this case), the applicant must show that the requested evidence is unavailable. In the absence of primary evidence, the applicant must then submit relevant "secondary evidence." If the applicant does not submit secondary evidence, they must submit at least two affidavits from persons who are not party to the application and who have direct knowledge of the event and circumstances. In criminal record cases, this would include affidavits from the prosecuting attorney, the defense attorney, the judge, or some other individual (other than derivative family members) who has direct knowledge of the disposition of the arrest. See 8 C.F.R. § 103.2(b)(2)(i) and (ii).

The AAO notes that, despite the request for evidence contained in the NOID, the applicant failed to provide a final disposition for the arrest listed in October 1983 and this deficiency has not been overcome on certification. As stated above, an alien is inadmissible if he or she has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1181(a)(2)(A)(i)(II). There is no waiver of inadmissibility for drug offenses, except the single offense of simple possession of 30 grams or less of marijuana. Thus, the applicant has not met her burden of proof and her 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. Based on the evidence of record, the applicant has failed to establish that she is admissible; therefore, she failed to establish she is eligible for adjustment to temporary resident status.

ORDER: The director's decision to deny the application is affirmed. This decision constitutes a final notice of ineligibility.