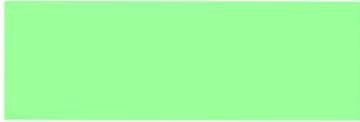




**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **MAY 15 2013** Office: CALIFORNIA SERVICE CENTER

File: 

IN RE: Applicant: 

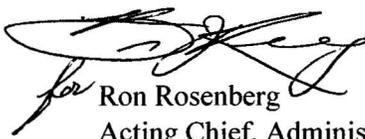
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.


for Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), during the original filing period. The director denied the application for temporary residence, finding the applicant was statutorily ineligible on account of the applicant's conviction for a crime involving moral turpitude.

On appeal, the applicant requested a waiver of grounds of excludability and asserts that his conviction for domestic violence was dismissed pursuant to diversion.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States throughout the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

The issue in this proceeding is whether the applicant has established his eligibility for temporary resident status. The AAO has reviewed the evidence of record, including the applicant's criminal record, and concludes that the applicant has not met his burden of proof to establish his eligibility for temporary resident status.

The record before the AAO reveals that the applicant has at least two criminal convictions. An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to temporary resident status. 8 C.F.R. § 245a.2(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 term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

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Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record reflects the applicant has the following criminal history:

- A September 15, 1983 conviction for violating section 23152(a) of the California Vehicle Code, *Driving while intoxicated*. This offense is considered a misdemeanor.
- A September 15, 1983 conviction for violating section 12500(a) of the California Vehicle Code, *Unlicensed driver*. This offense is considered a misdemeanor.
- On April 21, 1987 the applicant was arrested and charged with *sodomy in concert and spousal abuse*. According to a court record, submitted by the applicant, criminal proceedings were suspended for two years, the applicant was ordered to attend domestic diversion classes and pay a fine. Diversion was terminated and case dismissed on December 6, 1988.

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On March 21, 2013, the AAO issued a notice of intent to deny and a request for additional evidence related to the applicant's criminal history. The notice was returned to sender as not deliverable as addressed. The notice was sent to the applicant's address of record.

The applicant failed to meet his burden of proof of establishing his eligibility for temporary resident status.

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