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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: **SEP 28 2005**

IN RE:

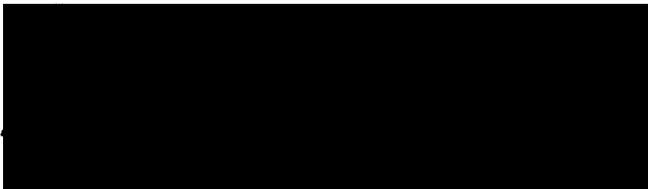
Applicant:



APPLICATION:

Application for Temporary 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 office that originally decided your case. 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Texas Service Center is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant had been convicted of two felonies. On appeal, the applicant pointed out he was never in prison for more than one year.

One year after the appeal was filed, the director entered an *unsigned* November 4, 1993 notice addressed to the applicant into the record, which indicated that the matter was being certified to the Legalization Appeals Unit (LAU), now AAO. It is not clear that the director sent such notice to the applicant. Counsel, in a related matter, has recently stated that this temporary residence case has been pending at the LAU since 1993. However, the director never forwarded the matter to the LAU, and did not forward it to the AAO until June 21, 2005.

The temporary resident status of an alien may be terminated if the alien is convicted of any felony, or three or more misdemeanors. 8 C.F.R. § 245a.2(u)(iii).

"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).

In the termination notice the director set forth the applicant's two felony convictions for Driving While Intoxicated, which occurred on August 23, 1988 and November 16, 1989. On appeal, the applicant, who was unrepresented at the time, simply pointed out that he did not serve more than one year's time in prison. Counsel has not supplemented the appeal.

As stated above, "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. The fact that the alien may not have served a year's time of imprisonment does not alter the fact that he was convicted of felonies in the United States. Thus, he remains ineligible for temporary resident status.

Subsequent to filing this appeal, the applicant applied for adjustment to permanent resident status under section 245 of the Act on the basis of an approved relative petition. In that proceeding, the District Director, Houston ascertained that the applicant was also convicted of Misdemeanor Driving While

Intoxicated on October 13, 1983, May 29, 1987, January 13, 1994 and March 3, 1992, and of Felony Driving While Intoxicated on December 7, 1995.

The applicant's temporary resident status is terminated because of his many felony and misdemeanor convictions. 8 C.F.R. § 245a.2(u)(iii).

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