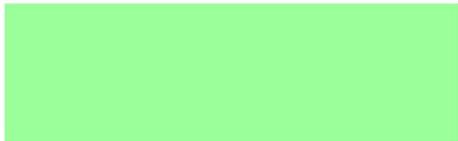




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

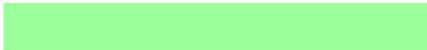


Date: **OCT 21 2014** Office: SALT LAKE CITY

FILE:

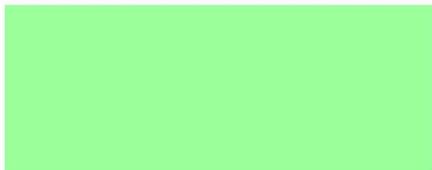


IN RE: Applicant:



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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. 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 cursive script, appearing to read "Elizabeth McCormack".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Salt Lake City Field Office Director denied the application for adjustment from temporary to permanent resident status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, in part, finding the applicant had not filed for adjustment from temporary to permanent resident status within 43 months from the date of approval of his temporary residence application, as required by law. *See* Section 245A(b)(1)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(1)(A). The director further denied the application, finding that the applicant gave false information or made willful misrepresentations to immigration authorities concerning his criminal history. Finally, the director denied the application because the applicant had been convicted of one felony and two misdemeanors.

On appeal, counsel asserts that for humanitarian reasons, the application should not be denied for late filing because the applicant relied upon his notario's erroneous advice about when to file the Form I-698. Counsel further asserts that the applicant did not commit fraud in his representation of his criminal record and that the applicant had not been convicted of the crimes listed in the director's decision to deny the Form I-698 application.

An alien who does not apply for adjustment from temporary to permanent resident status before the end of 43 months from the date of approval of temporary residence is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5)

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).

Timeliness of filing I-698

United States Citizenship and Immigration Services (USCIS) records indicate that the applicant's Form I-687 application for temporary residence was approved on August 1, 2005.<sup>1</sup> The applicant filed the Form I-698 application to adjust from temporary to permanent residence on June 23, 2009, approximately 46 months after his Form I-687 was approved.

The applicant asserts that he relied on two notario services to advise him when to file the Form I-698. He hired a notario to prepare and file his Form I-687 and expected the notario to notify him of the date to file the Form I-698. He said he retained another notario approximately three months after the 43-month time limit had run. He also said that he expected to be notified by USCIS when it was time to take the next step.

USCIS does not have the discretion to treat late filed Form I-698s as timely. The applicant has failed to overcome this basis of the director's decision to deny the Form I-698.

Misrepresentation

The director determined that the applicant misrepresented his criminal history to USCIS on his Form I-687 [REDACTED]. In response to question #37 asking whether the applicant had ever been arrested for violating any law, excluding traffic violations, the applicant marked no. The director stated that the record of proceedings show that the applicant was convicted of illegal possession/use of a controlled substance in addition to the misdemeanors that the applicant disclosed on his first Form I-687 application. On appeal, counsel for the applicant asserts that the applicant did not commit fraud by failing to disclose prior arrests because he had not been convicted of the crimes. Counsel states that the applicant's first Form I-687 indicates that he was arrested by legacy INS in 1983, and for a DUI in 1981 and 1982. Counsel states the arrests listed on that form were mistakenly listed by the applicant's previous notario. Counsel submits a certification from the State of California indicating that the applicant has no criminal history in the California. Counsel submits a similar certification from Utah. Counsel misread the question at issue. The question is not limited to convictions but clearly asks about all arrests. Because this appeal will be dismissed for untimely filing of the Form I-698, we will not issue a notice of intent to deny to the applicant to give him an opportunity to explain how his representations on the Form I-687 do not constitute a misrepresentation. As such, we withdraw the director's finding of misrepresentation.

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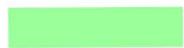
<sup>1</sup> The applicant filed two Form I-687s. His initial application was denied and his appeal was dismissed due to his criminal history. The applicant filed a second Form I-687 pursuant to the CSS/Newman Settlement Agreements that was approved.

Criminal history

The record reveals that the applicant may have the following criminal history:

1. On August [REDACTED], the applicant was charged with violating California Vehicle Code (VC) § 23102(a), a misdemeanor, *driving while under the influence*; and §12500(a), a misdemeanor, *driving without a license* on August 8, 1981. On September [REDACTED] the applicant was convicted of both charges and was fined and placed on three years probation. [REDACTED] Municipal Court, [REDACTED].
2. On April [REDACTED] the applicant was charged with violating Section 211 of the California Penal Code, a felony, *assault with a deadly weapon*. The charge was dismissed. [REDACTED] Municipal Court, [REDACTED].
3. On December [REDACTED] the applicant was charged with violating California Vehicle Code (VC) § 23102(a), a misdemeanor, *driving while under the influence*; §12500(a), a misdemeanor, *driving without a license*; and VC § 23103, a misdemeanor, *reckless driving* on or about November [REDACTED]. On January [REDACTED] the applicant was convicted of violating VC § 23103 and the other charges were dismissed [REDACTED] Municipal Court, [REDACTED].
4. On April [REDACTED] the applicant was charged with violating section 211 of the California Penal Code, a felony, *robbery*. On April [REDACTED] the case was dismissed as the prosecution was unable to proceed. [REDACTED] Municipal Court, [REDACTED].
5. On March [REDACTED] the applicant was charged with *attempted entry as a smuggled alien*. Prosecution was declined.
6. The applicant was arrested on April [REDACTED] and charged with a violation of section 14601(a), *driving while license suspended*.
7. The [REDACTED] Police Department arrested the applicant on February [REDACTED] and charged him with violating section 14601(a) VC, *driving while license suspended* and section 40508(a) VC, *failure to appear*. Final disposition unknown.
8. The [REDACTED] Police Department arrested the applicant on March [REDACTED] and charged him with violating section 14601(a) VC, *driving while license suspended*. Final disposition unknown.
9. The applicant was arrested on May [REDACTED] and charged with violating section 11700 VC, *acting as dealer*; section 12120 VC, *sales of vehicle not owner/dealer*; and section 14601.1(a) VC, misdemeanor, *driving while license suspended*. He was convicted of violating section 14601.1(a)(VC). ([REDACTED] Municipal Court).

The director found that the applicant had been convicted of a third degree felony in 2003. On appeal, counsel for the applicant submits a court record and photograph for an individual named [REDACTED] and asserts that Mr. [REDACTED] not the applicant, was the defendant convicted of illegal possession or use of a controlled substance. We will withdraw the director's finding regarding this felony conviction. We are not persuaded by counsel's evidence but find that the court document in the file relates to a different individual with a name similar to the applicant's.



The record indicates that the applicant may have been convicted of at least three misdemeanors. As such, he would be ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available. While there are no motion rights in the current proceeding, in any further proceeding in which admissibility is an issue, the applicant must address the convictions.

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