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



U.S. Citizenship
and Immigration
Services



DATE: **MAY 20 2015**



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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Houston, Texas, terminated the applicant's temporary resident status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case will be remanded for further consideration and action.

The applicant was granted temporary resident status on April 11, 1988. In a Notice of Intent to Terminate dated January 29, 2014, the director indicated that the applicant was no longer eligible for temporary resident status, as he had been convicted of possession of marijuana and theft/check. The applicant was given the opportunity to present sufficient evidence to overcome his inadmissibility to the United States. On February 21, 2014, the field office director terminated the applicant's temporary resident status, finding that the applicant had failed to establish that he was admissible to the United States due to his drug conviction.

An alien is ineligible for temporary resident status if the alien is inadmissible under the provisions of section 212(a) of the Immigration and Nationality Act (the Act) whose grounds of inadmissibility may not be waived pursuant to section 8 C.F.R. §245A.2(k)(3). 8 C.F.R. §245A.2(k)(2).

Section 212(a)(2)(A) of the Act states, in pertinent part:

(i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

....

(II) a violation of (or a conspiracy or attempt 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)), is inadmissible.

8 C.F.R. §245A.2(k)(3) excepts a single offense of simple possession of thirty grams or less of marijuana from the provisions of section 212(a) of the Act that may not be waived.

The record reflects that on October 29, 1993, the applicant pled guilty in the County Criminal Court for [redacted] County, Texas to possession of two ounces or less of marijuana, a violation of section 481.121(b)(1) HSC, a Class B misdemeanor. Adjudication of guilt was deferred and the applicant was ordered to pay a fine and was placed on probation for one year.

An arrest report obtained from the [redacted] Police Department dated October 23, 1993, reflects that at the time of his arrest, the applicant was in possession of 4.9 grams of marijuana.

As the applicant's possession of marijuana conviction of October 29, 1993 involved possession of less than 30 grams of marijuana, the applicant qualifies for a waiver. 8 C.F.R. §245A.2(k)(3).



Therefore, the case will be remanded for the field office director to provide the applicant the opportunity to file a Form I-690, Application for Waiver of Grounds of Inadmissibility. The new decision, if adverse, shall be certified to this office for review.

The applicant bears the burden of proof to establish his eligibility for temporary resident status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245a.2(d)(5).

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.