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FILE:



Office: Los Angeles

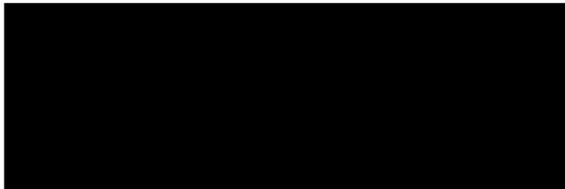
Date:

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IN RE:

Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status pursuant to 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the District Director, Los Angeles, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to provide criminal dispositions, thereby preventing the director from determining the applicant's eligibility.

On appeal, the applicant states that he went to the police department and the hall of records and obtained all of the records that were available. He indicates that he was told that records were no longer available for some of the old arrests.

The regulation at 8 C.F.R. § 245a.3(b) states:

Eligibility. Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence if the alien:

- (1) Applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application.

The applicant was granted temporary resident status on May 18, 1988. The 43-month eligibility period for filing for adjustment expired on December 18, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on October 24, 2005, more than thirteen years late. Thus, the application should have been denied on this basis. Pursuant to section 245A(f) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(f), no denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

Regarding the issue the director did address, an alien who is convicted of a felony, or three or more misdemeanors, or a crime involving moral turpitude, is ineligible for permanent resident status. 8 C.F.R. § 245a.3(c)(1); 8 C.F.R. § 245a.3(c)(2).

"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).

On his application for adjustment to permanent residence the applicant indicated he had been arrested four times, in 1975, 1976 and 1989. The report of the Criminal Justice Information Services Division, Federal Bureau of Investigation, shows the applicant was arrested for *Misdemeanor Drunk Driving on Highway* on November 23, 1975, in Norwalk, California. The report indicates the charge was dismissed on April 22, 1977, but that the applicant was convicted of section 23103 of the California Vehicle Code, *Reckless Driving*, on that date.

The report also indicates that the applicant was arrested for *Drunk Driving* on August 15, 1976 in Long Beach and that the charge was changed to *Reckless Driving*, resulting in a conviction on January 11, 1978.

The same report shows the applicant was arrested on March 23, 1989 for *Lewd/Lascivious Acts with Child under Fourteen* in Norwalk. The charge is shown twice on the report; it is not clear that he was charged with only one count.

The applicant provided a letter from the Los Angeles Police Department dated May 12, 2005, advising Citizenship and Immigration Services (CIS) as to how the applicant could properly request records. He also furnished a May 8, 2006 Court Record Certification from the Superior Court of California, County of Los Angeles, indicating no record for [REDACTED]. It is noted that this is not the applicant's full name, although he has used this version.

The director sent a notice to the applicant on June 27, 2006, advising him to provide original or certified court dispositions for all arrests. The applicant then submitted a printout from the Superior Court, County of Los Angeles, showing his arrest on October 29, 1991 in Los Angeles for the following offenses under the California Vehicle Code: *Under Influence Alcohol/Drug in Vehicle*, section 23152(a); *.08% or More Weight Alcohol Driving Vehicle*, section 23152(b); *Driving with Suspended License*, section 14601.2(a); and, under section 148.9(a) of the California Penal Code, *Falsely Represent Self to Officer*. The printout shows the case was dismissed.

The applicant also provided a form letter from the Los Angeles County Sheriff's Department, stating that it does not release crime reports, but that CIS could receive records directly from its Records and Identification Bureau.

Declarations by an applicant that he has not had a criminal record, or that his arrests did not lead to convictions, are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a negative determination. See 8 C.F.R. § 245a.2(k)(5).

The applicant has provided a document that allows CIS to verify that he was not convicted of any of the four October 29, 1991 charges. Court dispositions concerning the 1975, 1976 and 1989 arrests have not been furnished. While the applicant has provided a "no record" statement regarding [REDACTED] it is not clear that the Superior Court checked for records under the applicant's full name, [REDACTED]. The applicant does refer on appeal to having paid fines, implying he was convicted. Without actual court records, a

determination cannot be made that the applicant was not convicted of three or more misdemeanors, a felony, or a crime involving moral turpitude.

It is concluded that the applicant has failed to provide criminal records which are necessary for determining the applicant's admissibility and eligibility for permanent residence. Furthermore, the application for adjustment to permanent resident status was and is deniable because it was filed years after the eligibility period ended.

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