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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 21 2007
XVN 88 187 03008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and nationality Act, as amended, 8 U.S.C. § 1160.

ON BEHALF OF APPLICANT: Self-represented

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, California Service Center, and remanded by the Legalization Appeals Unit now the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be dismissed.

The director initially denied the application because he determined that the applicant had failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the legacy Immigration and Naturalization Service relating to the applicant's claim of employment for [REDACTED]

On appeal, the applicant reasserted the veracity of his employment claim for [REDACTED]

The director withdrew his previous decision and reopened the proceedings for review. Subsequently, the director denied the application because the applicant failed to submit the requested court dispositions regarding his criminal history.

On appeal from the subsequent decision, the applicant submits the requested court dispositions.

The regulation at 8 C.F.R. § 210.3(d)(3) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status.

"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 the term "felony,"* pursuant to 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).

"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. 8 C.F.R. § 245a.1(p).

The FBI record dated December 12, 2003 reflects the following offenses in the state of California:

- On October 2, 1995, the applicant was arrested by the Sheriff's Office in San Diego for felony driving under the influence with a prior.
- On November 22, 1998, the applicant was arrested by the Los Angeles Police Department for exhibiting a deadly weapon other than a firearm.
- On October 6, 2003, the applicant was arrested by the Los Angeles Police Department for driving under the influence with priors.

On May 7, 2004, the director issued a Notice of Intent to Deny, advising the applicant of the arrests mentioned above. The applicant was given 30 days in which to submit the court disposition for each arrest. The applicant, however, failed to respond to the notice. Accordingly, on August 28, 2004, the director denied the application.

On appeal, the applicant submits the court dispositions, which reveal the following:

- On November 22, 1998, the applicant was arrested and subsequently charged with violating section 12025(a)(2) PC, carrying a concealed weapon; section 657(f) PC, public intoxication; and two counts of section 417(a)(2) PC, exhibiting a firearm. On January 7, 1999, the applicant pled *nolo contendere* to violating sections 12025(a)(2) PC and 657(f) PC, both misdemeanors. For violating section 12025(a)(2) PC, the applicant was sentenced to serve 90 days in jail and placed on probation for three years. For violating section 647(f) PC, the applicant was placed on probation for three years and ordered to attend Alcoholic Anonymous meetings and a domestic violence program. The remaining charges were dismissed. Docket no. [REDACTED]
- On October 2, 1995, the applicant was arrested and subsequently charged with felony driving under the influence of alcohol and drugs, a violation of section 23152 VC/23175 VC; felony driving while having a measurable blood alcohol, a violation of section 23152(b) VC/23175 VC; and driving while privilege is suspended for prior DUI conviction, a violation of section 14601.2(a). On January 21, 2004, the case was dismissed. Docket no. [REDACTED]

The court documents provided for docket no. [REDACTED] relate to the applicant's October 2, 1995 and October 6, 2003 arrests.

It is noted that the complaint for docket no. [REDACTED] also indicated that the applicant had been previously convicted of the following misdemeanors:

1. On March 28, 1990 in the Municipal Court of the West Los Angeles Judicial District of violating section 23152 VC, driving under the influence. Docket no. [REDACTED]
2. On March 28, 1990 in the Los Angeles Judicial District of violating section 23152 VC, driving under the influence. Docket no. [REDACTED]
3. On March 10, 1994 in the Municipal Court of the Los Angeles Judicial District of violating section 23152 VC, driving under the influence. Docket no. [REDACTED]
4. On February 17, 1995 in the Los Angeles Judicial District of violating section 23152 VC, driving under the influence. Docket no. [REDACTED]

It is also noted that the record reflects that the applicant was apprehended for alien smuggling. The final outcome, however, is unknown.

The applicant is ineligible for the benefit being sought due to his six misdemeanor convictions. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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