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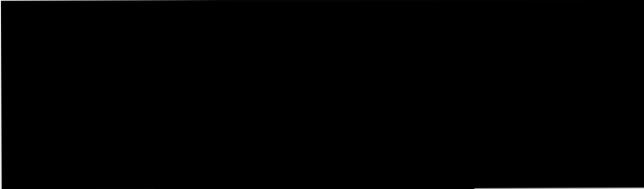
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [Redacted]
XPH-88-243-2072

Office: TEXAS SERVICE CENTER

Date: AUG 01 2006

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. The file has been returned to the service center that processed 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: This matter is an application for temporary resident status denied by the Director, Southern Service Center, then reopened and denied again by the Director, Texas Service Center. The matter is before the Administrative Appeals Office (AAO), on appeal. The appeal will be dismissed.

The applicant appears to be represented, however, the record does not contain Form G-28 Notice of Appearance as Attorney or Representative. Therefore, the decision will be furnished only to the applicant.

The director initially denied the application because of the applicant failed to appear for his scheduled interview. The director finally denied the application because the applicant failed to assist the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) in determining the final disposition of the criminal charges against him.

On appeal from the initial decision, the applicant stated that he would like to reschedule another interview.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

"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" of this section. 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. Under this exception, for purposes of 8 C.F.R. part 245a of the Act, the crime shall be treated as a misdemeanor 8 C.F.R. § 245a.1(p).

The Florida Criminal History report reveals that the applicant has had the following arrests:

1. December 31, 1989, Palm Beach County, Florida, DUI (disposition unknown);
2. December 22, 1991, Florida Highway Patrol, DUI; August 16, 1998, Florida Highway Patrol, charge 1, Failure to Appear (disposition not known); charge 2, DUI (convicted) charge 3, DUI Unlaw Bld Alch (convicted); charge 4, Driving While License Suspended Cancelled Revoked (convicted);
3. February 8, 2004, Broward County, Drive on Permanently Revoked Driver License (disposition unknown);
4. August 5, 2004, Broward County, charge 1, Expired DL over four months (disposition unknown); charge 2, Drive While License Suspended (disposition unknown); and,
5. December 16, 2004, Broward County, Violation of Probation (disposition unknown).

On August 12, 2005 and again on November 14, 2005, the applicant was advised of the above arrests and was allowed 90 days in which to submit the court disposition or evidence to overcome the director's finding. The applicant did not respond to either notice.

The applicant has the burden to establish, with affirmative evidence that outstanding charges were dismissed or were in error. An alien applying for temporary resident status had the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, and is otherwise eligible for temporary resident status under this section. 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.