U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] XYU 88 138 01039 Office: CALIFORNIA SERVICE CENTER Date: SEP 11 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:

[redacted]

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 was denied by the Director, Western Service Center. The matter was remanded by the Administrative Appeals Office (AAO), and denied again by the Director, California Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit the requested court disposition regarding his September 4, 2004 arrest.

On appeal, counsel asserts that the applicant's conviction of section 415 PC appears to be an infraction. Counsel states that if said conviction is not an infraction, the applicant is in the process of asking the court to reduce the misdemeanor conviction to an infraction.

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 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).

The record reveals that on November 1, 1981, the applicant was arrested by the Costa Mesa Police Department in California for assault with a deadly weapon, a violation of section 245(a) PC, a felony. On November 17, 1981, the applicant was charged with wilful failure to appear as charged, a violation of section 1320(a) PC, a misdemeanor. On November 24, 1986, the applicant was arrested under warrant. On November 26, 1986, the complaint was amended to include a violation of section 415 PC, disturbing the peace, a misdemeanor. On November 26, 1986, the applicant was convicted of disturbing the peace. The applicant was ordered to pay a fine, sentenced to serve seven days in jail and placed on probation for one year. The remaining charges were dismissed. Case no. [redacted]

On September 4, 2004, the applicant was arrested by the Redmond Police Department in Oregon for assault in the 2nd degree, a violation of ORS 163.175; assault in the 4th degree, a violation of ORS 163.160; strangulation, a violation of ORS 163.187; menacing, a violation of ORS 163.190; and harassment, a violation of ORS 166.065. On April 12, 2005, the applicant was convicted of recklessly endangering another person, a misdemeanor. The applicant was ordered to pay a fine and sentenced to serve four days in jail. The remaining charges were dismissed. Case no. [redacted]

On July 27, 1995, the applicant was arrested by the Jefferson County Sheriff's Office in Oregon for assault in the 4th degree, a violation of ORS 163.160 and harassment, a violation of ORS 166.065. On September 22, 1995, the applicant was convicted of harassment, a misdemeanor. The applicant was placed on probation for one year and ordered to attend an alcohol and an anger control treatment program. The remaining charge was dismissed. Case no. [redacted]

On appeal, counsel states, "see attached recent BIA case[1] related to the grant of change of plea, dated September 15, 2005, which reduced [the applicant's] misdemeanor to an infraction." Counsel provides copies of the court disposition for each conviction mentioned above along with a letter from [redacted] dated July 28, 2005. Mr. [redacted]'s letter, which is addressed to counsel, indicating that he had contacted the Orange County

[1] Counsel submitted a copy of the Board of Immigration Appeals' decision, *Matter of Cota*, 23 I&N De. 849 (BIA 2005).

Criminal Court Clerk's Office regarding the court records for the applicant's conviction of section 415 PC on November 26, 1986.

The evidence in the record does not establish that the applicant's misdemeanor conviction of section 415 PC has been reduced to an infraction. The court disposition clearly indicates that the applicant was charged with and subsequently convicted of a misdemeanor offense of section 415 PC. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In conclusion, the applicant is ineligible for temporary resident status because he has been convicted of three misdemeanors. 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 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 adjustment of 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.