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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

XPO 89 021 4020

Office: CALIFORNIA SERVICE CENTER

Date: SEP 27 2006

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status denied by the Director, Western Service Center. It was reopened and denied again by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director initially denied the application based on the fact that the applicant's claimed landscaping duties did not qualify as seasonal agricultural services. The director finally denied the application because the applicant's criminal history made him ineligible for temporary resident status.

On appeal from the initial decision, the applicant stated that he had been a law abiding citizen since 1998 and that he hoped to remain and work in the United States. The applicant did not respond to the final decision.

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).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy 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 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act, 8 U.S.C. § 212 (a)(2)(A)(i)(II) An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act, 8 U.S.C. § 212(a)(2)(C).

The record reveals that the applicant was arrested and charged with the following crimes:

On March 10, 1991, the West Covina Police Department arrested the applicant and charged him with violation of 484(a) PC MISD, Petty Theft; Case # [REDACTED] The applicant entered a guilty plea on April 16, 1991, and was sentenced to six days charitable time, a \$100 fine, and ordered to stay away from [REDACTED]

- On March 1, 1991, the LaVerne Police Department arrested the applicant and charged him with violation of 14601.1(A) VC MISD, Driving with Suspended License; Case # [REDACTED] The applicant was convicted and sentenced to 150 hours charity work, pay a fine and serve three years

probation; 12500 (A) VC MISD, Unlicensed Driver, dismissed; 4000 (A) VC INF- Registration Required, dismissed.

- On March 31, 1993, in the Pomona Judicial District, the applicant's probation was reinstated. On June 28, 1993, the court held a probation violation hearing. The applicant did not make an appearance in court or send counsel. The applicant's probation was revoked, and a Bench Warrant in the amount of \$15,000 was ordered.
- On September 26, 1994, in Pomona Judicial District, a Bench Warrant Hearing was held. The applicant was sentenced to serve 180 days in jail and his probation was reinstated.
- On September 26, 1994, the Claremont Police Department arrested the applicant and charged him with violation of 148.9 PC, False ID to a Police Officer; Case # [REDACTED]. On October 25, 1994, the case was called for arraignment, [REDACTED]. The applicant did not appear in court, nor was he represented by counsel. A Bench Warrant in the amount of \$1,000 was ordered. The applicant was convicted on October 31, 1994 and was ordered to spend two days in jail and serve three years summary probation.
- On May 13, 1991, the San Bernardino Sheriff's Office arrested the applicant and charged him with Hit-Run PR/DMG; Case # [REDACTED]. The final disposition of this charge is unknown.
- On May 30, 1999, the San Bernardino Sheriff's Office arrested the applicant and charged him with: violation of VC12500A, no DL in Poss; violation of VC23152A, DUI ALCON/DR; and, VC23152B, DUI ALCOH/0; Case # [REDACTED]. The final disposition of these charges is unknown.

In response to the Notice of Intent to Deny, dated March 31, 2004, the applicant submitted a partial list of his criminal record from the Municipal Court of Citrus, California, Pomona, California and the Superior Court of San Bernardino County, California. The lists are court records and do provide the disposition of most of the charges as requested. The disposition of four outstanding charges remains unknown. Nevertheless, the applicant was convicted of three misdemeanors and is ineligible for temporary residence pursuant to 8 C.F.R. § 210.3(d)(3).

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.