



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

FEB 28 2007

XDA 88 019 7259

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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. 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 temporary resident status was denied by the Director, Southern Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to provide the final court dispositions of all arrests since his arrival in the United States.

On appeal, counsel for the applicant asserts that the application was denied in error. Counsel submits court documents relating to the applicant's arrests.

An alien is ineligible for temporary residence if he has been convicted of a felony, or three or more misdemeanors committed in the United States. *See* 8 C.F.R. § 245a.2(c)(1). Also, an alien is inadmissible to the United States if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. *See* Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

"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).

The legacy Immigration and Naturalization Service (now Citizenship and Immigration Services) received the results of the alien's FBI fingerprint check, which reveal the following criminal history:

1. On August 1, 1984, the applicant was arrested in Greeley, Colorado under the name of [REDACTED], and charged with auto theft and first-degree trespass.
2. On August 14, 1985, the applicant was arrested in Dallas, Texas, and charged possession of marijuana and evading arrest.
3. On September 16, 1986, the applicant was arrested in Richardson, Texas, and charged with criminal attempted burglary.

On September 3, 1992, the applicant was requested to provide the final court dispositions of the arrests detailed above. The applicant, in response, provided a letter from the Chief Probation Officer, Department of Probation Services, Nineteenth Judicial District Court, serving Weld County, Greeley, Colorado, stating that a criminal record was conducted using the applicant's name and date of birth, February 28, 1966, and no record was found of charges of conspiracy to commit auto theft or conspiracy to commit first-degree trespassing in Weld County.

The director denied the application on November 18, 1992, because the applicant failed to provide the final court dispositions of all arrests since his arrival in the United States.

On appeal, counsel for the applicant states that the application was denied in error. Counsel submits the following:

- A photocopy of the letter dated November 16, 1992 from the Chief Probation Officer, Department of Probation Services, 19th Judicial District, Weld County, Colorado, that was previously submitted in response to the request for additional evidence, along with a printout of the criminal record check revealing no criminal record for [REDACTED] for the period from November 4, 1995 to November 4, 2005;
- a photocopy of a letter dated June 5, 2006, from the Court Clerk, Weld County Combined Courts, Greeley, Colorado, stating that no criminal record was found for [REDACTED] or [REDACTED],” date of birth February 28, 1966;
- an arrest report from the Police Department, Greeley, Colorado, revealing that [REDACTED],” date of birth February 29, 1965, was arrested in Greeley, Colorado, on August 1, 1984, and charged with aggravated motor vehicle theft in violation of section 18-4-409 of the Colorado Penal Code, a Class 4 felony, and first degree criminal trespass in violation of section 18-4-502 of the Colorado Penal Code, a Class 5 felony, along with various other police documents relating to the arrest. ([REDACTED]);
- a criminal record printout from the Dallas County Clerks Office, indicating that the charges of possession of marijuana and evading arrest were both dismissed in the Dallas County Criminal Court, Dallas, Texas on January 22, 1988;
- a photocopy of a document dated August 13, 1985 from the County Criminal Court of Dallas County, Texas, charging the applicant with possession of less than two ounces of marijuana;
- a photocopy of a document from the County Criminal Court of Dallas County, Texas, entering a final judgment and ordering [REDACTED] to pay final judgment in the amount of \$160.00 plus court costs in the amount of \$40.00;
- a photocopy of a document dated January 22, 1988, from the County Criminal Court of Dallas County, Texas, dismissing the charges of possession of less than two ounces of marijuana and evading arrest because the charges had been pending on the court’s docket for two years and the defendant, [REDACTED], was still unapprehended and his whereabouts were unknown;
- a photocopy of a letter to the applicant dated October 31, 1986, from Ramon Rincon, attorney at law, informing the applicant that the charge of attempted burglary of habitation was dismissed (“no billed”) by the Dallas County Grand Jury on October 28, 1986, and the criminal proceeding against the applicant had been terminated;
- a photocopy of a document from Criminal District Court, Dallas, Texas, indicating that the grand jury dismissed the charge of attempted burglary of a habitation that had

been filed against the applicant, along with police documents relating to the applicant's arrest on the charge of attempted burglary of a habitation;

- a photocopy of a letter dated November 10, 2004, from [REDACTED] County Clerk, Collin County, Texas, stating that no misdemeanor criminal record was found for [REDACTED] AKA [REDACTED];”
- a photocopy of a document dated July 21, 2005, from [REDACTED] Dallas County Clerk, indicating that no history of misdemeanor convictions was found for “[REDACTED]” date of birth February 28, 1966, for the period from 1975 through July 20, 2005; and,
- a photocopy of a letter dated July 14, 2005, from [REDACTED] District Clerk of Dallas County, Texas, stating that no record of felony convictions was found for “Carlos Delgado,” date of birth February 28, 1966.

The applicant has submitted court documents indicating that the charges detailed in No. 2 above, possession of less than two ounces of marijuana and evading arrest, were dismissed by the County Criminal Court of Dallas, Texas, on January 28, 1988, because the applicant was still unapprehended and his whereabouts were unknown.

The applicant also submitted documents from the County Criminal Court of Dallas County, Texas, indicating that the Dallas County Grand Jury “no billed” the charge of attempted burglary of a habitation and dismissed the criminal proceeding. These documents relate to the offense detailed in No. 3 above.

The applicant has provided an arrest report from the Police Department, Greeley, Colorado, revealing that [REDACTED]” date of birth February 29, 1965, was arrested in Greeley, Colorado, on August 1, 1984, and charged with auto theft in violation of 18-4-409, a Class 4 felony, and first degree trespass in violation of 18-4-502, a Class 5 felony, along with various police documents relating to the arrest (No. 1 above). [REDACTED] This arrest appears on the applicant's Federal Bureau of Investigation (FBI) fingerprint results report. There is no question that “[REDACTED]” date of birth February 29, 1965, and the applicant are one and the same person. However, neither counsel nor the applicant has provided any court documents revealing the final court disposition of these two felony charges.

Declarations by an applicant pertinent to his criminal record are subject to a verification of facts by the Service. The applicant must cooperate fully 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 failed to provide a document necessary for the adjudication of the application, thereby preventing the Service from determining whether he has been convicted of one or both of the felony charges filed against him.

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