

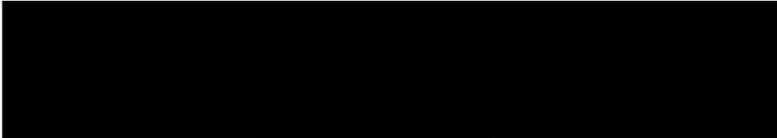
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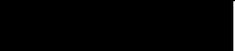


U.S. Citizenship
and Immigration
Services

41



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 11 2007

XLB 89 040 2247

IN RE:

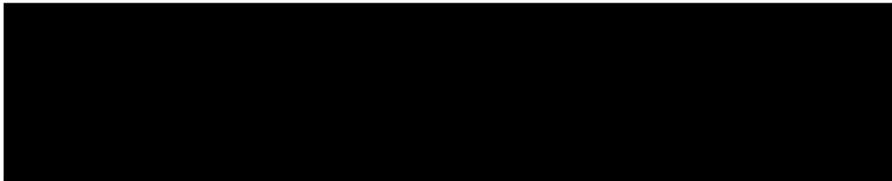
Applicant:



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:



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

The application was initially denied because the applicant failed to demonstrate that he had performed qualifying agricultural employment during the 12-month period ending May 1, 1986. He overcame the basis of denial, and his application was then denied because he had evidently been convicted of a felony.

On appeal, counsel points out that the applicant was not convicted of a felony, but rather two misdemeanors.

An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3).

On December 14, 1992 the applicant was arrested for *Forcible Assault with a Deadly Weapon not Firearm; Gross Bodily Injury Likely*, section 245A(1) of the California Penal Code (PC), and for *Inflict Corporal Injury on Spouse/Cohabitant*, section 273.5 PC. He was charged with the latter offense, and was convicted of this misdemeanor on December 30, 1992.

On April 6, 1999 the applicant was arrested, and on May 4, 1999 charged with *Driving Under the Influence Alcohol/Drugs*, section 23152(a) of the California Vehicle Code (VC), and *Driving Under the Influence Alcohol/0.08 %*, section 23152(b) of the VC. Although the first charge was dismissed, he was convicted of the latter charge on May 20, 1999.

Additionally, on October 19, 1989 the applicant was charged with the following misdemeanors under the VC: *Under Influence Alcohol/Drugs in Vehicle*, section 23152(a); *0.08 % or More Weight Alcohol While Driving Vehicle*, section 23152(b); *Unlicensed Driver*, section 12500(a); and *Driving with Suspended License*, section 14601.2(a). He pled guilty to the second and third charge on June 2, 1992; the other two charges were dismissed. In his plea he admitted to a prior conviction of section 23152(a) of the VC.

Also, on January 5, 1993, the applicant was charged with *Driving with Suspended License*, section 14601.2(a) of the VC. On January 14, 1993 he pled guilty.

The applicant was charged on September 21, 1995 with *Unlicensed Driver*, section 12500 of the VC. He was convicted on November 8, 1995.

Counsel cites *Matter of Lopez-Meza*, 22 I&N Dec. 1188, for the premise that drunk driving convictions cannot be used as a ground of removal from the United States. That decision focused on whether such offense constitutes a crime involving moral turpitude, an issue that is not relevant here.

Including the admitted prior offense mentioned above, the applicant was convicted of seven misdemeanors. While the director referred to one offense, *Inflict Corporal Injury*, as a felony, the fact remains that the applicant is ineligible for temporary residence due to his seven misdemeanor convictions.

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.