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FILE:



XFR-88-171-2221

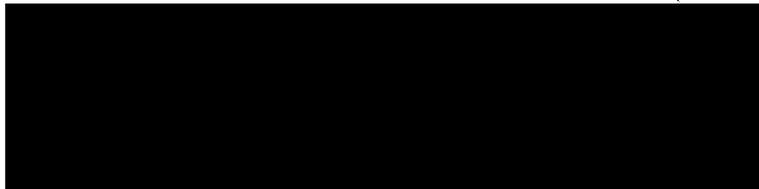
Office: Texas Service Center

Date:

MAR 06 2007

IN RE:

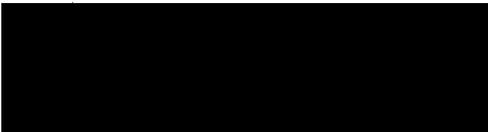
Applicant:



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. It was reopened and denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The application was originally denied because the applicant failed to appear for the required interview concerning his application. On appeal, the applicant requested that he be given a second chance. The matter was reopened, and the application was denied because of the applicant did not provide court dispositions relating to his arrests. On appeal, the applicant states that he has not been convicted of a felony or three misdemeanors.

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

"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).

An alien is inadmissible 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. Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

The record contains a report of the Federal Bureau of Investigation showing that on January 20, 1991 the applicant was arrested by the Austin, Texas Police Department for *Theft by Appropriation* and *Fictitious Name and Date of Birth/Misdemeanor*. The report indicates no charges were filed regarding the theft charge. No information is provided concerning the fictitious name charge.

The same report shows the applicant was also arrested for *Driving While Intoxicated (DWI)*, a Class B misdemeanor under section 49.04 of the Texas Penal Code, on May 29, 1995 by the Wichita Falls, Texas Sheriff's Office. The applicant pled guilty on July 17, 1995 and served four days confinement and paid a \$500.00 fine.

On May 3, 1996, the applicant was again arrested in Texas for *DWI*. He was convicted on July 9, 1996, and was sentenced to 90 days confinement, 18 months probation, and a \$650.00 fine.

Also on May 3, 1996, the applicant was arrested for *Driving While License Invalid*, a Class B misdemeanor under section 521.457 of the Texas Revised Code. This charge was dismissed on July 9, 1996.

The Temple, Texas Police Department arrested the applicant for *DWI* on July 7, 2001. He was convicted on January 30, 2002, and sentenced to 30 days confinement and a fine of \$1,200.00.

The applicant was convicted of the federal misdemeanor charge of *Illegal Entry*, 8 U.S.C. § 1325, Case Number [REDACTED], on February 20, 1990 in the United States District Court, Western District of Texas.

On October 13, 2005, the director requested the applicant to submit final court dispositions for his 1991, 1995 and 2001 arrests. In response, the applicant submitted his criminal history check results dated November 30, 2005 from the Temple, Texas Police department. However, this history check merely indicates that the applicant has three additional arrests and fails to provide any dispositions. The applicant has failed to submit evidence to establish that the FBI report regarding the applicant's convictions was in error.

It is noted that the applicant was ordered deported by the immigration judge in San Antonio, Texas on November 21, 1990. However, the deportation was not effected.

It is further noted that the record contains no evidence that the applicant was ever interviewed regarding this application. Pursuant to 8 C.F.R § 210.2(c)(2)(iv), each alien who filed his application in the United States, regardless of age, must appear at the appropriate Immigration and Naturalization Service (the Service) office and must be fingerprinted. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived when it is impractical because of the health of the applicant.

The applicant's failure to appear for the interview constitutes another ground of ineligibility.

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