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

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FILE: [REDACTED]
XEM-89-071-05005

Office: LOS ANGELES

Date: OCT 26 2007

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was initially denied by the Director, Western Service Center, on October 26, 1990. The applicant filed a Form I-694 appeal and the Director, California Service Center, reopened the proceeding *sua sponte*. The application was denied by the Director, Los Angeles District Office, on April 16, 2007, and is now before the AAO on appeal. The appeal will be dismissed.

The director denied the application because she found that the applicant had failed to submit requested documents. Specifically, the director requested that the applicant provide federal income tax returns for 1984 and 1985, with Forms W-2; an employment verification letter from a current employer with pay stubs; and original or certified final court dispositions for all the applicant's arrests. The applicant failed to provide this documentation.

On appeal, the applicant stated that he did perform seasonal agricultural labor during the twelve month period ending May 1, 1986. The applicant stated that his Form I-700 was properly filed and he was interviewed by an officer. Although he submitted sufficient evidence of his residence in the United States, he was issued a Form I-72 requesting additional information. The applicant stated that he has complied with all the requested information but he will provide more information on appeal. The applicant resubmitted a copy of the court disposition for his arrest in 1998, as well as a FICA earnings summary for the years 1996 through 2006.

An applicant for temporary residence pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160 whose grounds of inadmissibility may not be waived pursuant to Section 210(c)(2) of the Act, must establish that he or she is admissible to the United States as an immigrant. Section 210(a)(1)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1160(a)(1)(C).

Applicants who have been convicted of certain criminal offenses are deemed inadmissible to the United States on grounds enumerated in Section 212 of the Act. A crime involving moral turpitude (CIMT) constitutes an offense resulting in inadmissibility where an applicant is convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a CIMT or an attempt or conspiracy to commit such a crime, unless certain exceptions apply. Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1082(a)(2)(A)(i)(I). One exception requires that the crime was committed when the applicant was under 18 years of age and the applicant was released from confinement more than five years before the date of application. Therefore, the applicability of this exception hinges, in part, on the applicant having been under 18 years of age when the crime was committed. Section 212(a)(2)(A)(ii)(I) of the Act, 8 U.S.C. § 1082(a)(2)(A)(ii)(I). The other exception requires that the maximum penalty possible for the crime did not exceed imprisonment for one year and, if the applicant was convicted, that the applicant was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed). Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1082(a)(2)(A)(ii)(II). Therefore, the applicability of this exception hinges, in part, on the applicant having not been sentenced to a term of imprisonment greater than six months.

Practicing prostitution has been found to be a CIMT. Matter of W-, 4 I. & N. Dec. 401 (Central Office 1951) - [REDACTED] Section 1 (practicing prostitution). Security checks conducted by Citizenship and Immigration Services indicate the applicant was arrested for

prostitution in Los Angeles, California in 1988. A court disposition is necessary to determine whether the applicant was convicted of a CIMT and, as a result, is inadmissible to the United States. Since the applicant was approximately 27 years old at the time of this arrest, it is unlikely that he was under 18 at the time the crime was committed. Therefore, the first exception to the finding of inadmissibility based on a CIMT is unlikely to apply. Since the results of the security checks do not indicate whether the applicant was sentenced to a term of imprisonment greater than six months, a court disposition is also necessary to determine the applicability of an exception to a finding of inadmissibility based on a CIMT.

The director issued a Form G-56 on January 12, 2005 requesting that the applicant provide court disposition information. The applicant provided a court disposition for an arrest that occurred in California in 1998 and resulted in a conviction for driving a vehicle while over the legal alcohol weight limit of .08%. The applicant failed to provide a court disposition for the 1988 incident. On May 8, 2006, the director issued a Form I-72 requesting that the applicant provide original or certified court dispositions for any and all arrests the applicant has had, regardless of where the arrest took place. The Form I-72 also explained that if the arrests did not go to trial, the applicant must obtain certified proof from the city attorney's office indicating the final disposition. The Form I-72 indicated that, in a case where a court disposition is not available, the applicant must provide official or certified evidence from the court confirming the unavailability of the record. The documentation or evidence of unavailability must be marked as an official or certified copy. The Form I-72 then listed "Arrested on August 4, 1988 Los Angeles Police Department." The applicant resubmitted the court disposition for his 1998 arrest, but again failed to submit a court disposition for the 1988 arrest. The applicant also failed to submit evidence confirming the unavailability of the record.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). The applicant's eligibility for temporary residence depends, in part, on his admissibility to the United States. The inquiry regarding whether or not the applicant was convicted of a CIMT and the nature of any resulting sentence is material to determining whether he is admissible to the United States. The applicant failed to submit requested evidence necessary for determining whether he was convicted of a CIMT and determining the nature of any resulting sentence. The applicant's failure to submit the requested court disposition is grounds for denying the application.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence sufficient to overcome this determination. Specifically, the applicant has provided neither a court disposition for the 1988 arrest nor evidence from the court confirming the unavailability of the record. The appeal must therefore be dismissed.

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