



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 03 2006

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:

[REDACTED]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The director initially denied the application because of adverse evidence acquired by the Immigration and Naturalization Service, or the "Service", now Citizenship and Immigration Services, or "CIS," regarding the applicant's claimed employment for [REDACTED]. The director finally denied the application because the applicant failed to assist the Service in determining the final disposition of the criminal charges against him.

On appeal from the initial decision, the applicant reaffirmed his claimed employment and submitted additional evidence. The applicant did not respond to the more recent decision of denial.

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).

The FBI report reveals that on October 22, 2002, the applicant was arrested by the Ventura County, California Sheriff's Department and charged with GRAND THEFT, agency case [REDACTED]. Grand Theft may be prosecuted as either a misdemeanor or a felony according the California Penal Code CPC. The director concluded that such arrest and conviction could render the applicant ineligible for temporary resident status.

On October 12, 2004, and again on February 10, 2005, the applicant was advised of the above arrest and was allowed 30 days in which to submit the court disposition or evidence to overcome the director's finding.

The record does not contain any responses from the applicant.

Declarations by an applicant that he /she has not had a criminal record are subject to verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by an applicant for adjustment of status will be subject to verification by the Service. Failure by an applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence, and such evidence of admissibility or eligibility as may be required by the examining

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.