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FILE: [REDACTED]  
XFR-89-020-2044

Office: CALIFORNIA SERVICE CENTER

Date: JUL 26 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:

SELF-REPRESENTED

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, Chief  
Administrative Appeals Office

**DISCUSSION:** This matter is an application for temporary resident status denied by the Director, Western Service Center. The matter is before the Administrative Appeals Office (AAO), on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to assist the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), in determining the final disposition of the criminal charges against him.

On appeal, the applicant states he did not inform the Service of his new address when he moved to Florida. He states that his employment authorization was taken from him and he was advised to file an appeal.

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 November 21, 1987, the applicant was arrested in Madera, California and charged with Felony Driving Under the Influence and Hit And Run. The report further reveals that on December 9, 1987, the applicant was arrested in Madera, California and charged with Carry Concealed Weapon.

On April 16, 1992, the applicant was advised of the above arrests and was allowed 70 days in which to submit the court disposition or evidence to overcome the director's finding. He was also advised to furnish a DL-414 or H-6 record from the Department of Motor Vehicles. He failed to do so, and the director denied the application.

The record does not contain any court dispositions or other relevant evidence from the applicant.

The applicant has the burden to establish, with affirmative evidence that outstanding charges were dismissed or were in error. 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(c), 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.