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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



US, Citizenship and Immigration Services

PUBLIC COPY



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: OCT 31 2006
XDE- 88 202 4048

INRE: 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 District Director, Denver, Colorado and then reopened and denied by the Director, Northern Regional Processing Facility. The case was then reopened and denied again by the Director, Texas Service Center. The matter is before the Administrative Appeals Office (AAO), on **appeal**. The appeal will be dismissed.

The district director and the facility director denied the application based on adverse information acquired by the Immigration and Naturalization **Service (INS), now** Citizenship and Immigration Services (CIS), relating to the applicant's claim of employment for _ . The center director denied the application because the applicant's criminal history made him ineligible for temporary resident status.

On appeal from the facility director's decision, the applicant reaffir ployment. The applicant submitted a letter explaining how he worked for sub-contractor . In response to the final decision, the applicant submits letters of recommendation, copies of arrest records and a personal appeal statement.

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(0).

"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).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act, 8 U.S.C. § 212 (a)(2)(A)(i)(II) An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act, 8 U.S.C. § 212(a)(2)(C).

The record reveals that the applicant was arrested and charged with the following crimes:

- On August 31, 2003, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, case , guilty, time served (prior judgment);
- On December 18, 2004, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, case ●●●●●1
- On January 25, 2004, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, case guilty, time served, (prior judgment);

- On October 12, 2003, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, case _____, guilty, time served (prior judgment);
- On August 9, 2003, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, case _____, guilty, time served (prior judgment);
- On September 23, 2000, the Garland, Texas Police Department arrested the applicant and charged him with Driving While Intoxicated-Second, case _____, disposition unknown;
- On September 23, 2000, the Garland, Texas Police Department arrested the applicant and charged him with Fail to Maintain Financial Responsibility-First, case number unknown, **warrant** _____ disposition unknown;
- On March 22, 1997, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, case number unknown, disposition unknown;
- On December 1, 1995, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, case number unknown, warrant _____ disposition unknown;
- On March 26, 1995, the Garland, Texas Police Department arrested the applicant and charged him with No Driver's License and Failure to Maintain Financial Responsibility, case number unknown, warrant _____ disposition unknown;
- On December 18, 2004, the Garland, Texas Police Department arrested the applicant and charged him with Public Intoxication, ticket _____ guilty; time served (prior Judgment);
- On February 12, 2000, the **Garland**, Texas Police Department arrested the applicant and charged him with N-o Seat Belt-Driver, guilty, \$64.00 fine;
- On October 5, 1999, the Garland, Texas Police Department arrested the applicant and charged him with No Valid State Inspection Sticker, guilty, \$79.00 fine;
- On April 11, 1999, the Garland, Texas Police Department arrested the applicant and charged him with Fail to Yield Left Turn Intersection, guilty;
- On April 11, 1999, the Garland, Texas Police Department arrested the applicant and charged him with Failure Maintain Financial Responsibility, guilty, time served (prior Judgment);
- On April 11, 1999, the Garland, Texas Police Department arrested the applicant and charged him with No Valid Texas Drivers License, guilty, \$260.00 fine;
- On May 1, 2003, the Criminal Court Judge, Dallas County, Texas, discharged the applicant from supervision after having been convicted of DWI, case _____
- On May 1, 2003, the Criminal Court Judge, Dallas County, Texas, discharged the applicant from supervision after having been convicted of DWI 2ND, case _____
- On April 17, 2001, the applicant was convicted in Dallas County Court, Texas of a Class A misdemeanor and given 180 days in **jail**, a \$1,000 fine and 24 months supervision;

- On April 18, 2000, the applicant was ordered by the Dallas County Court, Texas to attend a State approved DWI program for repeat offenders;
- On November 25, 1998, the applicant was convicted of a Class B Misdemeanor in the Dallas County Criminal Court, Texas and given 120 days in jail, a \$600 fine and 24 months probation;
- On November 25, 1997, the applicant was ordered to serve 5 days in jail by the Dallas County Court, Texas and attend a State approved DWI program for repeat offenders and ordered not to operate a motor vehicle or drink alcoholic beverages;
- On April 21, 1991, District Court, Weld County, Colorado, the applicant appeared in court having been charged with Driving After Revocation **Prohibited**, C.R.S. 42-2-206 (1), guilty, Class 6 Felony, 10 days in Weld County jail;
- On March 27, 1988, the Fort Morgan, Colorado Police Department arrested and charged him with Damage Property, **Mischief**, case _ disposition unknown;
- On October 1, 1989, the Fort Morgan, Colorado Police Department arrested and charged him with Driving **Under** the Influence Liquor, arrest warrant _____ disposition unknown;
- On March 25, 1990, the Fort Morgan, Colorado Police Department arrested and charged him with Driving Under the Influence Liquor, arrest warrant _____ → guilty, 5 days;
- On **April** 21, 1991, the Greeley, Colorado Police Department arrested and charged him with Habitual Offender, arrest _ a felony (Retired) and Traffic Violation, a misdemeanor, disposition unknown; and,
- On December 27, 2005, in the Morgan County Combined Court, Fort Morgan, Colorado, the applicant was convicted of Driving Under the Influence _____ .d 4 unspecified other charges, cases numbered _____ and fined a total of \$1, 416.
- The record reflects that the applicant was also convicted of 13 separate traffic violations in the State of Texas from April 11, 1999 to May 18, 2005.

The applicant is ineligible for temporary resident status because of his one felony and at least ten misdemeanor convictions. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

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.