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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



LI

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 13 2005

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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, reopened and denied again by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In the initial decision, the director denied the application because the applicant failed to submit a complete application within the time permitted as required of S-9 preliminary application. In the final decision, the director denied the application because of the applicant's criminal record.

On appeal from the initial decision, the applicant reaffirmed his claimed employment and submitted supporting documentary evidence.

The record does not contain a response from the applicant to the final 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).

"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).

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. 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.

The FBI report reveals that on February 17, 1994, the applicant was arrested and charged with possession of narcotics, controlled substance, a felony offense. The final outcome of this charge is unknown, as the requested court disposition was not made available to the Citizenship and Immigration Services.

On July 6, 2004 and again on October 11, 2004, the applicant was advised of the above arrests 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. The applicant has the burden to establish, with affirmative evidence that outstanding charges were dismissed or were in error.

The applicant is ineligible for temporary resident status. Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. Furthermore, there is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(I), section 212(a)(2)(A)(i)(II), or section 212(a)(2)(C) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. See section 210(c)(2)(B)(ii) of the Act.

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.