

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L 1

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 30 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:

[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:** The temporary resident status as a special agricultural worker was terminated by the Director, Western Service Center. The matter was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO) and terminated again by the Director, California Service Center (CSC). The matter is now before the AAO on appeal. The appeal will be dismissed.

The initial termination was based on the fact that the applicant had failed to provide evidence that he had not been convicted of a felony. On appeal from the initial decision, counsel stated that convictions were required to deny IRCA benefits and that reliance on allegations of arrest is not an appropriate basis to terminate the application.

The subsequent termination by the CSC included information that security checks had determined that the applicant had, in fact, been convicted of a felony. The applicant did not respond to the CSC director's decision.

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).

The record reveals that on March 18, 1976, in El Centro, California, the applicant pled guilty to and was convicted of the felony offense of Burglary, Section 459 of the California Penal Code, case # [REDACTED]

The applicant is ineligible for temporary resident status because of his felony conviction. 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.