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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

41

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

04 2006

IN RE:

Applicant:



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, then reopened and denied again by the Director, California Service Center. The matter is before the Administrative Appeals Office (AAO), on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was 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 [REDACTED]. The director finally denied the application because of the applicant's criminal conviction.

On appeal from the director's initial decision, the applicant reasserted his claimed employment for [REDACTED] and claimed additional employment for [REDACTED]. The applicant submitted an employment letter signed by [REDACTED]. The record does not contain a response 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.

Court documents contained in the record reveal that on May 14, 1994, the applicant was arrested and charged with violation of section 23152(a) of the California Vehicular Code (CVC) Aggravated Driving While Under the Influence of Intoxicating Liquor, a Class 4 Felony. The applicant pled guilty to this charge on August 31, 1994.

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.