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U.S. Citizenship
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Services

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DEC 21 2006

FILE:

XTO 88 665 04058

Office: CALIFORNIA SERVICE CENTER

Date:

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The Director, California Service Center denied the application because the applicant failed to appear for fingerprinting. The applicant has not addressed the director's decision or provided any evidence to overcome the director's findings.

As of March 29, 1998, applicants for Temporary Resident Status as a Special Agricultural Worker (SAW) are required to be fingerprinted at a Citizenship and Immigration Services (CIS) Application Support Center or approved Designated Law Enforcement Agency.

On October 4, 2005, the case was remanded as the applicant had established qualifying agricultural employment during the requisite period. On November 2, 2005, a notice was sent to the applicant at his address of record, advising him to appear at the CIS office in Van Nuys, California on December 6, 2005, to be fingerprinted. The notice was returned by the post office as unclaimed. The envelope indicates that the post office provided the applicant at least two opportunities to acquire the notice before it was returned to the California Service Center. To date, no correspondence has been submitted by the applicant. On December 9, 2005, the director denied the application because the applicant failed to appear for the required fingerprinting.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by CIS. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by an applicant for adjustment of status will be subject to verification by the Service. Failure by an applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence, and such evidence of admissibility or eligibility as may be required by the examining immigration officer in accordance with such requirements specified in this part."

The record indicates that the applicant was arrested on January 16, 2005 and charged with driving after license revoked. (Docket # 05005211) He was again arrested and charged with violating a protection order, a misdemeanor. The applicant was convicted of violating the protection order on May 26, 2005. (Docket # 04083252)

FBI fingerprint checks reveal an earlier criminal history, i.e. on May 17, 1996, the San Diego Police Department arrested the applicant and charged him with battery on person, a violation of section 242 of the California Penal Code. He was convicted of violating 242 PC.

The applicant failed to appear as required for fingerprinting. Consequently, the applicant has not met the required burden of proof establishing admissibility or eligibility for temporary resident status as a SAW.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.