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



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: California Service Center

Date: JAN 31 2006

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. All documents have been returned to the office that originally decided 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. An appeal was dismissed by the Chief, Legalization Appeals Unit. The Director, Administrative Appeals Office reopened the matter and again dismissed the appeal. The matter is again reopened, the previous decisions are withdrawn, and the appeal will be sustained.

The center director denied the application because the applicant had seemingly failed to provide required court dispositions, and additional evidence of his claimed agricultural work. The appeal was dismissed because the applicant had still, apparently, failed to furnish criminal records.

Pursuant to 8 C.F.R. § 103.5(b), the Administrative Appeals Office will *sua sponte* reopen or reconsider a decision under section 245A or 210a of the Immigration and Nationality Act when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O--*, 19 I&N Dec. 871 (Comm. Feb. 14, 1989)

The record reflects that counsel did furnish the requested evidence well before the appeal was dismissed. In light of that, the matter will be reopened.

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).

A January 23, 1989 report from the Federal Bureau of Investigation indicates that the applicant was arrested for Assault With a Deadly Weapon in Long Beach, California on August 30, 1983. The actual court documents reveal that two misdemeanor charges were brought against the applicant, for battery and vandalism. On May 27, 1986 the applicant pled guilty to Count II, vandalism, a misdemeanor, and the battery charge was withdrawn.

The same FBI report indicates that the applicant was arrested for battery, and also vandalism, on May 5, 1986 in Hayward, California. A report from the Alameda County Sheriff's Office shows that the applicant was not booked following that arrest.

The record indicates that the applicant was convicted of only one misdemeanor, and counsel has provided the proper dispositions for all arrests. The applicant is not ineligible for temporary residence on the basis of criminality.<sup>1</sup>

In addition to the issue of criminality, an applicant for temporary residence as a special agricultural worker must also establish that he or she engaged in qualifying agricultural employment, which has been defined as seasonal agricultural services, for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1 (h).

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<sup>1</sup> The AAO decision of May 29, 2003 also noted the lack of a requested DMV report. The AAO now finds that the report submitted by the applicant is acceptable and finds no indication that the applicant was told that he could not submit the report contained in the record. Therefore, this issue is considered resolved.

On his application the applicant claimed to have picked apricots and cherries for farm labor contractor [REDACTED] for 92 days from May 1985 to May 1986. The Director, Western Service Center concluded the documentation the applicant submitted did not satisfy his burden of proof of having performed qualifying agricultural employment. This conclusion was based on derogatory evidence obtained from attempts to verify the applicant's claimed employment [REDACTED]. The director found that the signature and format of the applicant's documents did not match exemplars provided [REDACTED].

While the director indicated that the signature [REDACTED] on the applicant's documentation did not appear to match [REDACTED] signature on written correspondence provided to the director, the signature is very similar and was not examined by a forensic expert to establish its credibility. More importantly, the applicant later submitted an additional notarized affidavit from [REDACTED] dated March 14, 1992, affirming the applicant's employment.

Additionally, the director stated:

Furthermore, Service records reflect that you were released to officers of the Service from the Nevada County Jail, subsequent to your arrest for motor vehicle violations. At that time, you stated that you had been employed in a restaurant since entry.

A review of all the applicant's complete service records indicates that the applicant's statement, given on January 2, 1987, related to his employment since reentering the United States in October 1986. The applicant did not state or imply that he did not work in agriculture from May 1985 to May 1986.

An applicant for temporary resident status under section 210(a) of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). When something is to be established by a preponderance of evidence, it is sufficient that the proof only establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). *Also see*, [REDACTED] Evidence sec. 339 (2d ed. 1972).

Given the evidence presented, in particular the sworn affidavit from [REDACTED] it is probably true that the applicant worked for [REDACTED] for 90 days during the requisite period. As the issue of his criminal record has been clarified, the AAO finds that the appeal should be sustained.

**ORDER:** The previous decisions of the district director and the AAO are withdrawn, and the appeal is sustained. The director shall conduct necessary record checks, and complete the adjudication of the application.