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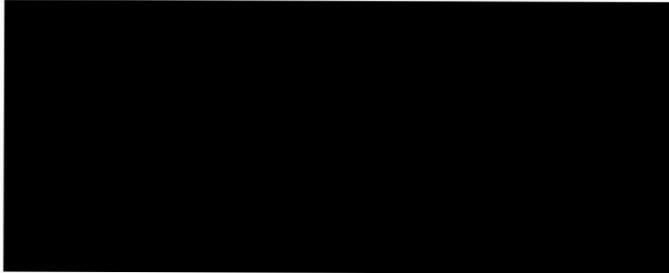
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Office: CALIFORNIA SERVICE CENTER

Date: **NOV 06 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:



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 case was remanded by the Administrative Appeals Office (AAO). The Director, California Service Center, reopened and denied again the application. The appeal will be dismissed.

The director initially denied the application the application for lack of prosecution because the applicant failed to appear for two scheduled interviews regarding his Application for Temporary Residence as a special agricultural worker.

On appeal, the applicant asserted that the Notice of Decision dated May 10, 1991, was the first notice he had received from the legacy Immigration and Naturalization Service (legacy INS).

The case was forwarded to the AAO for consideration On January 29, 2003, the AAO remanded the case for a new decision, noting that only one interview had been scheduled.

In his subsequent decision, the director denied the application because it was determined that the applicant had been convicted of a felony and was found inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

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. § 245a.2(c)(1).

"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).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

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 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Act.

After the case was remanded, the legacy INS received the results of the alien's FBI fingerprint check, which reveal the following criminal history record:

- On January 24, 1984, the applicant was received into the Madera Department of Corrections under a charge of assault with a deadly weapon other than a firearm. The FBI fingerprint check shows that a charge of assault with a deadly weapon other than a firearm/or by means of force likely to produce great bodily injury in violation of section 245(a)(1) of the California Penal Code (PC) was dismissed in the Justice Court of Madera.
- On January 29, 1985, the applicant was received into the Madera Department of Corrections under the name [REDACTED]. He was charged with presumptively buying stolen property and carrying a concealed weapon. The FBI fingerprint check shows that charges of receiving known stolen property in violation of section 496 PC, and carrying a concealed weapon in a vehicle in violation of section 12025(a) PC were later dismissed in the Justice Court of Madera.
- On April 28, 1987, the Fresno Police Department arrested the applicant under the name Jose [REDACTED] and charged him with possession of a controlled substance and possession of a narcotic controlled substance. The FBI fingerprint check shows that a charge of possession of a narcotic controlled substance in violation of section 11350 of the California Health and Safety Code (HS) was later dismissed in the Municipal Court of Fresno.
- On May 28, 1987, the Fresno Police Department arrested the applicant under the name [REDACTED] and charged him with possession of a narcotic controlled substance for sale. The FBI fingerprint check shows that the applicant was subsequently convicted in the Superior Court of Fresno of possession of a narcotic controlled substance for sale in violation of section 11351 HS, a felony, and that he was sentenced to 365 days in jail and three years of probation.
- On February 1, 1993, the applicant was received into the Madera Department of Corrections under the name [REDACTED] and charged with petty theft, a misdemeanor. The FBI fingerprint check shows that he was subsequently convicted and sentenced to 15 days in jail.

On October 12, 2004, the director requested the applicant to submit final court dispositions for all of the above offenses. The director also issued the following instructions:

If the court disposition is not available, you must obtain a certified letter from the court indicating the reason. If the arrest charge was not filed in any court, obtain a certified letter from the arresting agency indicating the final disposition of the arrest(s). If you are not able to obtain any of these documents, you must obtain police clearance letters from all cities and counties in which you have lived for the past five (5) years.

In response, the applicant submitted only the following unrelated court dispositions:

- On January 2, 1986, the applicant was charged under the name [REDACTED] in Madera Judicial District with driving under the influence in violation of section 23152 VC and unlicensed driving on a highway in violation of section 12500(a) VC. On January 7, 1986, the alien was charged with a third offense, failure to appear, in violation of section 853.7 PC. (Case No. [REDACTED]). The case was subsequently dismissed in 1991.
- On October 12, 1993, the applicant was charged under the name [REDACTED] with unlicensed driving in a parking facility in violation of section 12500(c) VC, and unlicensed

driving of a farm labor vehicle in violation of section 12519(a) VC. (Case [REDACTED] On January 14, 1994, the applicant pled guilty to unlicensed driving in a parking facility in violation of section 12500(c) VC. The disposition provided by the applicant shows that he was convicted under section 17(b) of the penal code, which establishes that this was a misdemeanor. The alien was ordered to pay a fine of \$50. The charge of unlicensed driving of a farm labor vehicle was dismissed.

The applicant also submitted evidence that he has an additional arrest for which there is no court disposition:

- On November 17, 1993, the applicant was charged under the name [REDACTED] with driving a farm labor vehicle with passengers at speeds of over 55 mph in violation of section 22406(d) VC. The final disposition is unknown. (Case No. [REDACTED])

The applicant submitted searches performed by the Madera Superior Courts using the names [REDACTED], [REDACTED], and [REDACTED] ever, the FBI report shows that his criminal offenses in Madera were under the names [REDACTED] and [REDACTED]. Although the FBI fingerprint check results show that he has a conviction of Petty Theft under the name [REDACTED], the name check result from the Madera Superior Court under the same name does not clear him because a misdemeanor charge would have been tried in a Municipal Court. There are four Municipal Courts in Madera County at which he could have been tried: Madera, Borden, Chowchilla, and Sierra.<sup>1</sup> The applicant did not submit any documentation from these courts.

The applicant also submitted certificates of search conducted by the Fresno Superior Court under the names [REDACTED] and [REDACTED] however, the FBI report shows that his criminal offenses in Fresno were under the names [REDACTED] and [REDACTED]. The applicant failed to submit final court dispositions for any of the offenses listed on the FBI rap sheet, evidence that none of the offenses for which he was arrested did not result in a conviction, or even police clearances researched by all aliases he had used in each jurisdiction.

The director determined that the applicant had been convicted of misdemeanor theft and a felony violation for possession of narcotics/controlled substance for sale, was inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and was thus ineligible for adjustment to temporary resident status.

On appeal, counsel for the applicant claims that “no case exists for my client, Mr. [REDACTED]” that “no entry was found for the above-named client,” and therefore “I cannot adequately respond to the notice of decision.”

In response to the request for evidence, the applicant failed to submit the requested court dispositions. Instead, the applicant submitted some name check results from some courts, many of which were conducted by the wrong court and under the wrong alias. The applicant has not provided any of the evidence requested by the director. For this reason alone, the application cannot be approved. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. 8 C.F.R. § 103.2(b)(12). Declarations by an

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<sup>1</sup> See internet website <http://www.madera-county.com/departments/elected.html>, accessed on October 6, 2006.

applicant that he or she has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant failed to submit evidence to establish that the FBI report regarding the applicant's narcotics conviction was in error.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). Based on the evidence of record, the applicant has failed to establish that he is eligible for adjustment to temporary resident status.

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