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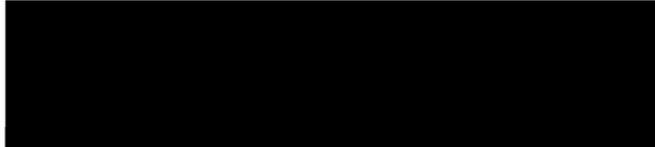
U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
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U.S. Citizenship
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FILE: [Redacted]
XCA 88 185 1044

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 27 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:

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

In the first denial, the application was denied because of adverse evidence acquired by the Immigration and Naturalization Service, or "the Service", now Citizenship and Immigration Services, or "CIS," regarding the applicant's claimed employment for [REDACTED]. The application was finally denied because a determination could not be made regarding the disposition of the applicant's arrests.

On appeal from the initial decision, the applicant reasserted his claimed employment and stated he would submit additional employment verification documentation. The applicant's appeal still being in effect, the applicant did not respond to the director's final 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).

"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 Act, formerly section 212(a)(9) of 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).

The record reveals that the applicant has the following arrest record:

- On May 25, 1995, the El Centro, California Sheriff's Office issued a warrant for the applicant's arrest for 1) Failure to Provide, and 2) Contempt of Court, case [REDACTED]. The disposition of these charges is unknown.

- On March 18, 1999, the El Centro, California Sheriff's Office arrested the applicant and charged him with 1) Corporal Injury on Spouse/Cohabitant, and 2) Damage/Use/Etc. Power Lines, case [REDACTED]. The disposition of these charges is also unknown.
- On August 14, 1999, the Service at El Centro, California arrested the applicant for Smuggling Illegal Alien, 8 U.S.C. §1324. The disposition of this charge is not known.

The applicant has the burden to establish, with affirmative evidence that the above stated charges were dismissed or were in error. On May 27, 2004, the applicant was requested to provide court records of the aforementioned charges. On September 20, 2004, the applicant was afforded an additional 30 days to submit records reflecting the disposition of the charges. To date, there has been no response whatsoever by the applicant addressing the charges. Therefore, CIS is unable to determine the applicant's eligibility for temporary resident status as a Special Agricultural Worker.

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.