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U.S. Citizenship
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Services

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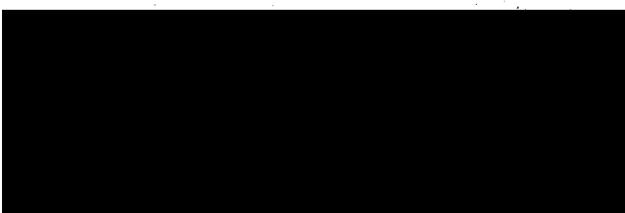


Office: CALIFORNIA SERVICE CENTER

Date: FEB 16 2007

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. 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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish his eligibility.

Counsel for the applicant filed a timely appeal.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under the provisions of section 210(c) of the Act and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

According to an FBI report based on the applicant's fingerprints, the applicant was arrested on November 12, 1980 in San Diego, California and charged with violating section 243 of the California Penal Code (PC); Battery on PO, section 148 PC; Resist PO; and section 23102(a) of the California Vehicle Code, DUI. In a notice of intent to deny the application, the director informed the applicant of the FBI report and asked the applicant to submit the court dispositions regarding all charges including a DUI in 1988 that he had admitted. The director informed the applicant that he must also submit either an H-6 printout or a Form DL 414 from the Department of Motor Vehicles. The applicant was granted thirty days to respond.

In response to the Service's notice, the applicant submitted a letter from the [REDACTED] [REDACTED] stating that the applicant is a good person and an information request dated May 26, 1994 from the California Department of Motor Vehicles. The applicant failed to submit final dispositions for any charges.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application. On appeal, the applicant asserts that mere apprehensions, pre-1989 convictions, alleged jail time served, and deportation charges do not qualify him for the benefit sought. He further asserts that battery upon a police officer is not necessarily a crime involving moral turpitude.

The regulation at 8 C.F.R. § 210.3(d)(3) states, in part, that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status. The regulation makes no distinction as to when the offenses are committed.

"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 the term "felony," pursuant to 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).

"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. 8 C.F.R. § 245a.1(p).

The applicant failed to submit the requested evidence, namely, final court dispositions for all charges. Consequently, the applicant failed to establish his eligibility for adjustment to temporary resident status as a special agricultural worker. Failure to release information deemed essential to the proper adjudication of an application may result in denial of the benefit sought. 8 C.F.R. § 210.3(b)(3).

It is further noted that the applicant was ordered deported on March 6, 1981. According to the results of a fingerprint check, the applicant was ordered deported again on October 13, 1982 and was convicted of illegal entry on June 27, 1984.

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