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FILE: [REDACTED]
XPO 89 527 2014

CALIFORNIA SERVICE CENTER

Date: JUN 13 2007

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. 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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, and was subsequently remanded to the director by the Administrative Appeals Office (AAO) on appeal. The director issued a new decision and the matter is again before the AAO on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to respond to a notice of intent to deny the application and submit the required Medical Form I-693 in a timely manner. On appeal, the applicant submitted the Form I-693. The AAO remanded the case to the director to consider the merits of the case, the Form I-693, and to allow the applicant to file a Form I-690 application for waiver. The director reopened the matter and issued a new notice of intent to deny the application. The applicant failed to respond. The director again denied the application, finding the applicant excludable because he is HIV positive.

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).

On the I-700 application, the applicant claimed to have worked 106 man-days at Ledesma Farms during the qualifying period. In support of his claim, the applicant submitted a Form I-705 affidavit purportedly signed by [REDACTED]. Finding the evidence insufficient, on January 24, 1989, the director issued a request for additional evidence asking the applicant to furnish documents to prove his residence in the United States and his medical form. There is no evidence that the applicant responded to the director's request for additional evidence. On December 7, 1990, the director notified the applicant of his intent to deny his application (NOID) for temporary resident status. On July 24, 1991, the applicant submitted the required Form I-693, which indicated that he was HIV positive. The director subsequently denied the application, finding that the applicant failed to meet his burden of establishing admissibility or eligibility for the benefit sought. On August 21, 2001, the AAO remanded the case to the director to reopen the case to give it a full adjudication on the merits and to allow the applicant the opportunity to submit a Form I-690, Application for Waiver of Grounds of Excludability. On October 5, 2004, the director reopened the case and issued a notice of intent to deny, finding the applicant excludable because he is HIV positive. The October 5, 2004 notice was returned "unclaimed." On January 24, 2005, the director issued a notice of denial and addressed it to the applicant at his address of record. The notice of denial was returned and marked "moved."

The applicant failed to overcome the director's decision for denying his application. The director gave the applicant the opportunity to submit a Form I-690 Application for Waiver of Grounds of Inadmissibility but the applicant did not file such an application.

According to the Form I-693 Medical Examination report in the record, the applicant tested positive on a serological test for HIV antibodies and that such test was confirmed by Western Blot. The applicant submitted separate laboratory reports reflecting positive results for the presence of HIV antibodies in his blood for both ELISA and Western Blot. Accordingly, the director determined that the applicant is excludable under section 212(a)(1)(A)(i) of the Act.

Section 212(a)(1)(A)(i) of the Act states, in part: "aliens who are inadmissible . . . are ineligible to receive visas and ineligible to be admitted to the United States . . . [include those] who [are] determined to have a communicable disease of public health significance, which shall include infection with the etiological agent for acquired immune deficiency syndrome."

Human immunodeficiency virus (HIV) is defined as such a communicable disease. 42 C.F.R. 24.2(b)(4). However, applicants infected with HIV may, upon meeting certain conditions have such ground of excludability waived. Nonetheless, the applicant has failed to file a Form I-690 Application for Waiver of Grounds of Excludability, therefore, the grounds cannot be waived.

Beyond the director's decision, it is noted that the applicant has a criminal history. An alien convicted of three misdemeanors or one felony is ineligible for adjustment to temporary resident status under SAW. 8 C.F.R. 210.3(d)(3).

According to an FBI report dated June 14, 2006, which is based upon the applicant's fingerprints, the applicant has the following arrests:

- On April 6, 1997, the San Bernardino Sheriff's Office arrested the applicant and charged him with Hit and Run/Deat, DUI Alcohol/DR, and DUI 08/100 of 1% alcohol.
- On December 12, 2001, the Los Angeles Police Department arrested the applicant and charged him with Poss Narcotic Cntol Sub.
- On November 18, 2003, the Norwalk Sheriff's Office arrested the applicant and charged him on one count of Poss Narcotic Cntol Sub.

The record does not include the final disposition of the above charges.

The applicant has failed to establish his eligibility for adjustment to temporary resident status as a special agricultural worker, and his admissibility to the United States.

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