



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XST 89 021 01050

Office: CALIFORNIA SERVICE CENTER

Date: MAR 21 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:



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 matter was remanded by the Administrative Appeals Office (AAO). The Director, California Service Center, withdrew the previous decision, reopened the proceedings and denied the application again. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period ending May 1, 1986. This decision was based on adverse information acquired by the legacy Immigration and Naturalization Service regarding the applicant's claim of employment for [REDACTED]

The case was forwarded to the AAO for consideration. On September 5, 2001, the case was remanded for the introduction of additional adverse evidence.

The director withdrew the previous decision, reopened the proceedings for review, and subsequently denied the application because the applicant had failed to submit the requested court disposition.

The applicant had neither addressed the subsequent decision nor provided any evidence to overcome the director's findings.

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.

"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 FBI record dated October 7, 2004, reflects that on January 10, 1991, the applicant was arrested by the Sheriff's office in Merced, California for willful cruelty to a child with possible injury or death, a violation of section 273(a)(1) PC. The applicant was subsequently convicted in the Merced County Municipal Court of this offense.

On November 2, 2004, the director issued a Notice of Intent to Deny advising the applicant to submit the court disposition for her January 10, 1991 arrest. The applicant, however, failed to submit the requested disposition.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by Citizenship and Immigration Services. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying

employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with such requirements specified in this part."

Because a violation of 273(a)(1) PC can be handled as either a misdemeanor or felony, and the record does not contain the actual court disposition for the applicant's January 10, 1991 arrest, the AAO cannot determine whether the applicant was convicted of a felony or a misdemeanor. It is concluded the applicant has failed to provide the court disposition necessary for the adjudication of her application.

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.