



U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHOENIX

Date: AUG 04 2008

XPH 88 098 1014

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the National Benefits Center. 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 initially denied by the Director, Western Service Center.¹ The applicant subsequently appealed the adverse decision to the Administrative Appeals Office (AAO) where the matter was remanded for further consideration.² The case has since been reviewed and a new decision has been issued by the Field Office Director, Phoenix. The matter is now before the (AAO) on appeal. The appeal will be dismissed.

In the most recent denial, the director determined that the applicant's felony conviction rendered him statutorily ineligible for temporary resident status under the provisions of the Special Agricultural Worker (SAW) program.

On appeal, the applicant states that he believes the law has changed with regard to DUI convictions and eligibility for temporary resident status and further claims that he was misinformed with regard to the immigration ramifications of his conviction.

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).

The record reveals that the applicant has been arrested and, in some instances, convicted of the following offenses:

1. On May 2, 1999, the applicant was arrested for *hit and run*, a misdemeanor in the State of Arizona. On July 19, 1999, the applicant pled guilty to this offense. (Case # [REDACTED])
2. On July 2, 2001, the applicant was arrested for the following misdemeanor offenses: *DUI-liquor/drugs/vapors/combo*, in violation of 28-1381(A)(1) of the Arizona transportation code; *DUI w/BAC of .10 or more*, in violation of section 28-1381(A)(2) of the Arizona transportation code; and *extreme DUI-BAC .15 or more*, in violation of section 28-1381(A) of the Arizona transportation code. The first two offenses were dismissed on August 13, 2001. However, the applicant pled guilty to and was convicted of the third offense for which he was sentenced to ten days in jail and placed on probation for 36 months.
3. On November 27, 2003, the applicant was arrested for *reckless driving*, a misdemeanor, in violation of 28-693(A) of the Arizona transportation code. On January 30, 2004, the applicant pled guilty to this offense. (Case # [REDACTED]).
4. On January 20, 2004, the applicant was charged with three misdemeanor offenses: *DUI-liquor/drugs/vapors/combo*, in violation of 28-1381(A)(1) of the Arizona transportation code; *DUI w/BAC of .08 or more*, in violation of 28-1381(A)(2) of the Arizona transportation code; and *extreme DUI-BAC .15 or more*, in violation of section 28-1381(A) of the Arizona transportation code. It does not appear that the applicant was convicted of these offenses.

¹ In a decision dated June 1, 1992, the Director, Western Service Center, denied the application based on the determination that the applicant failed to submit sufficient evidence to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period ending May 1, 1986.

² In a decision dated March 10, 1999, the AAO determined that the director's decision was erroneous and withdrew the adverse conclusion, noting that any further adverse information would have to be addressed in a new decision.

5. On April 17, 2006, the applicant was charged with *aggravated driving under the influence*, in violation of A.R.S. §§ 28-1383(A)(1), 28-1381(A)(1), 13-701, 13-702, 12-116.01, and 12-116.02, a class four felony. On October 9, 2007, the applicant was convicted of this offense for which he was placed on probation for ten years, sentenced to one year in jail, and ordered to pay monetary fines. (Case # [REDACTED])

As properly noted by the director, the applicant was convicted of a felony offense. Additionally, while not discussed in the denial, the applicant was also convicted of three misdemeanor offenses.

On appeal, the applicant asserts that he intends to file an appellate brief after he obtains legal representation and asks that a decision in this matter be postponed until after the applicant is released from jail on April 4, 2007. To date, however, no further evidence or information has been received either from a legal representative or from the applicant. As such, the record will be deemed complete as presently constituted.

The applicant also claims that he was misinformed by an Immigration and Customs Enforcement agent, who purportedly told the applicant that he can "be issued a new visa and continue the residency process." The applicant did not explain what is meant by "a new visa," which is particularly confusing in light of the fact that he did not enter the United States with a lawfully obtained U.S. visa. Moreover, the applicant's claim that he was misinformed is not supported by documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In conclusion, the record shows that the applicant is ineligible for temporary resident status because he has been convicted of a felony and three misdemeanors. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

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.