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U.S. Citizenship
and Immigration
Services



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FILE:

XFR 89 505 02054

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 29 2008**

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 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 denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (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, counsel asserts that the applicant has only been convicted for one misdemeanor offense, which does not render him statutorily ineligible for temporary resident status under provisions of the SAW program. Counsel also provides additional court documents.

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. § 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 Immigration and Nationality Act (the Act), formerly section 212(a)(9) of the Act. Pursuant to 8 C.F.R. § 245a.18(c)(2)(i), this ground of inadmissibility, (crimes involving moral turpitude) may *not* be waived.

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 the following about the applicant's record of convictions:

1. On January 4, 1989, the applicant was convicted of *disorderly conduct*, a misdemeanor, in violation of section 647(f) of the California Penal Code (PC). The applicant was sentenced to two years of probation and ordered to pay a fine of \$105. (Docket No. [REDACTED])
2. On February 12, 1990 the applicant was charged and on June 26, 1990 he was convicted of *driving under the influence*, a misdemeanor, in violation of section 23152(a) of the California

Vehicle Code (VC). The applicant was placed on probation for five years. (Docket No. [REDACTED])

3. On January 31, 1991, the applicant was convicted of *inflicting corporal injury on a spouse/cohabitant*, a felony, in violation of California section 273.5 PC. The applicant was sentenced to 180 in prison, of which 150 days were suspended, and placed on probation for two years. (Case No. [REDACTED])
4. On May 17, 1996, the applicant was arrested for *theft/unlawful taking or driving of a vehicle*, a felony, in violation of California section 10851(a) VC. On December 17, 1996, the applicant was convicted of this offense and placed on three years of felony probation as a result thereof. (Action No. [REDACTED])

On appeal, counsel argues that the applicant only has one misdemeanor conviction on his record and further indicates that a single misdemeanor conviction is insufficient to make the applicant statutorily ineligible for temporary resident status. However, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In fact, counsel's assertion is directly contradicted by documentation he now submits on appeal.

First, as indicated above, the documentation on record as well as that which counsel himself has submitted shows that the applicant has been convicted of not one, but two misdemeanor offenses. While these two offenses would not be sufficient to render the applicant statutorily ineligible, the record also shows that the applicant has been convicted of two felony offenses, either one of which is sufficient to render the applicant ineligible for temporary resident status. The applicant's ineligibility for his two felony offenses cannot be waived. 8 C.F.R. § 210.3(d)(3). Second, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as the offenses described in Nos. 3 and 4 above are both crimes involving moral turpitude pursuant according to precedent case law. *See In Re: [REDACTED]* 2007 WL 1520867 (BIA May 3, 2007) and *In Re: [REDACTED]* 2008 WL 486876 (BIA Jan. 28, 2008), respectively. It is noted that statutory provisions prohibit any waiver of the applicant's inadmissibility. *See section 210(c)(2)(B)(ii) of the Act.*

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.