

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

AUG 18 2009

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:

PUBLIC COPY

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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.


for
Robert P. Wiemann, Director
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 case will be remanded for further consideration and action.

The director denied the application because of the applicant's supposed felony conviction in 1989, which related to numerous misdemeanor convictions.

On appeal, counsel states that the denial of the applicant's application was based on the criminal record of a different alien using an alias. In support of this claim, counsel provided a copy of a 1999 FBI criminal history report which showed the named applicant had been apprehended by the Bureau on March 26, 1986 and had no other arrests. This corresponds to an earlier FBI report in the record from 1988, and supports the contention that the applicant was not convicted of the felony offense in 1989.

The perpetrator's name is given as [REDACTED]. The applicant is identified as [REDACTED]. The birth date for the applicant is given as February 8, 1964 and for the perpetrator, it is given as February 28, 1964.

The record contains a physical description of the applicant that differs from a physical description of the perpetrator. On the applicant's fingerprint card, Form FD-255, it lists the applicant as 5-5 and weighing 160 pounds, with brown hair and brown eyes. The FBI report provided by counsel indicates the applicant is 5-5 and 147 pounds with brown hair and brown eyes. However, on a Form I-213 Record of Deportable Alien that relates to the perpetrator, it lists the alien as 5-3 and 140 pounds with black hair and brown eyes. The Form I-213 also describes a tattoo on the alien's left upper arm. That document also lists a different name for the perpetrator's father, different places of birth and, states that the perpetrator's mother resided in Los Angeles. The applicant provides a statement on appeal in which he specifically states that he has never had any tattoos. The applicant also explains that he has only been arrested once, in November 1987, for driving under the influence. Furthermore, according to the applicant, his mother resides in El Salvador and has never lived in the United States.

Based on these discrepancies, it is concluded that there is insufficient material in this record to find that the applicant was convicted of the felony offense. However, prior to forwarding this matter to the AAO, the director was aware of these discrepancies and was aware that the information regarding the conviction had been copied from another file which may relate to a different alien. The director could and should have reviewed that file in order to determine if it relates to the applicant. While all indications suggest it does not, an actual

side-by-side comparison of the files, including a review of the photographs and fingerprints, is clearly the best way to totally resolve the issue.

The matter is remanded for that action to be taken and for adjudication of the special agricultural worker claim. It should be noted that the applicant's application for temporary resident status based on his agricultural employment had been recommended for approval. However, should the new decision be adverse, the applicant's appeal will remain in effect and he shall be allowed to respond without fee.

ORDER: The case is remanded for appropriate action.