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**U.S. Citizenship
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Services**

L4



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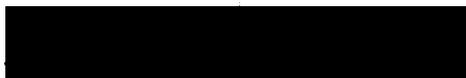


Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



JUL 21 2004

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. The file has 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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found the applicant to be inadmissible under section 212(a)(17) of the Immigration and Nationality Act (INA), [subsequently renumbered as section 212(a)(9)(A)], because the applicant had been deported from the United States and returned to this country without authorization within five years of such deportation. The director denied the application due to the fact that the applicant had failed to submit a Form I-690, Application for Waiver of Grounds of Inadmissibility, to overcome the grounds of inadmissibility.

On appeal, requested that he be allowed to submit an application for waiver for the grounds of excludability arising from his deportation. The applicant further requested that the Service grant his waiver application.

Section 212(a)(9)(A) of the INA states: "Aliens who have been arrested and deported,...and who seek admission within five years of the date of such deportation or removal" are inadmissible. Pursuant to section 210(c)(2)(B) of the Act, however, such inadmissibility is waivable.

The record indicates that the applicant illegally entered the United States in July 1982. In deportation proceedings arising from this illegal entry into the United States, the Immigration Judge ordered the applicant to be deported to El Salvador if he did not comply with a grant of voluntary departure from this country by September 15, 1985. The record contains no evidence that the applicant complied with the grant of voluntary departure by this date. Subsequently, the applicant was apprehended by officers of the United States Border Patrol when he illegally entered the United States from Mexico at San Luis, Arizona on March 23, 1986. The fact that the applicant departed this country at a point in time between September 15, 1985 and March 23, 1986 while under an alternate deportation effected a self-deportation. The record indicates that the applicant re-entered the United States within a five year period after deportation. Therefore, the applicant is inadmissible.

The applicant was advised of his inadmissibility in a Request for Information sent by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on July 18, 1988. At that time, the director informed the applicant that his inadmissibility could be waived upon receipt and approval of Form I-690 waiver application. The record indicates, however, that the applicant failed to apply for such a waiver. Additionally, there is no indication or claim that the applicant failed to receive the Request for Information.

The director determined that the applicant had failed to overcome the grounds of inadmissibility, and denied the application.

On appeal, the applicant reiterates his claim of agricultural employment. However, the record shows that as of the date of this decision, the applicant has failed to submit a Form I-690 waiver application in order to overcome the ground of his inadmissibility as required under 8 C.F.R. § 210.3(e)(2).

Section 210(a)(1)(C) of the INA requires an alien to establish that he is admissible as an immigrant to the United States. The applicant is inadmissible under section 212 (a)(9)(A) and such inadmissibility has not been waived. The applicant remains ineligible to adjust to temporary resident status as a special agricultural worker.

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