

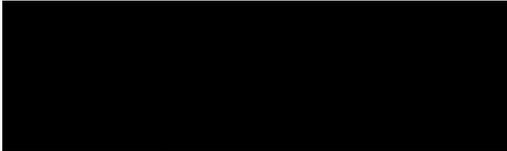
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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC CONF



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 27 2005

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. 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, 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 District Director, San Francisco, California, reopened and denied by the Director, Western Service Center. The matter was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO) and denied again by the Director, California Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed.

In the first two denials, the application was denied because of adverse evidence acquired by the Immigration and Naturalization Service, or the "Service", now Citizenship and Immigration Services, or "CIS," regarding the applicant's claimed employment for [REDACTED]. The application was finally denied because of the applicant's criminal record.

On appeal from the district director's decision, the applicant reasserted his claimed employment and submitted additional employment verification documentation. The applicant's appeal still being in effect, the applicant did not respond to the center director's initial decision. In response to the center director's final decision, the applicant submitted the court dispositions of his arrests.

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. Part 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 Act, formerly section 212(a)(9) of the Act.

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).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of

the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act.

The record reveals that the applicant was convicted of a misdemeanor violation of Section 243(A) of the California Penal Code (CPC), Battery upon a person, case # [REDACTED] on May 15, 1991; of a misdemeanor violation of Section 243 (A) of the CPC, Battery upon a person, case # [REDACTED] on September 30, 1991; and, of a misdemeanor violation of Section 273.5(A) of the CPC, Inflicting corporal injury on spouse/cohabitant, case # [REDACTED] on May 8, 1995.

The applicant is ineligible for temporary resident status because of his three misdemeanor convictions. 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. Furthermore, there is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(I), section 212(a)(2)(A)(i)(II), or section 212(a)(2)(C) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. 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.