



U.S. Citizenship
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FILE:

XSK-88-177-1007

Office: NEBRASKA SERVICE CENTER

Date: JUL 11 2006

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, Chief
Administrative Appeals Office

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

The director denied the application because the applicant had been convicted of a felony.

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).

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 U.S.C. 802. Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). 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)(i) of the Act, formerly section 212(a)(23) of the Act, 8 U.S.C. § 1182 (a)(2)(c)(i).

The record reveals the applicant was charged on February 8, 1989, in Emery County, Utah of violation of Section 76-6-404 UCA (1953) as amended Theft (Felony) that said defendant did obtain or exercise unauthorized control over the property of another with a purpose to deprive the owner thereof, to wit an operable motor vehicle. He was also charged with Unlawful Possession of a Controlled Substance. On April 4, 1989, he pled guilty to both charges.

The applicant is ineligible for temporary resident status because of his felony conviction and his controlled substance conviction. Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. There is also no waiver for a controlled substance unless the offense relates to a simple possession of 30 grams or less of marijuana. See section 210(c)(2)(B)(ii)(III) of the Act, 8 U.S.C. § 1160(c)(2)(B)(ii)(III). There is no evidence that the applicant was convicted of possession of less than 30 grams.

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.