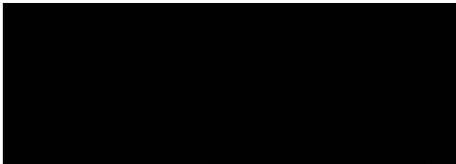


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U.S. Citizenship  
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**JUN 29 2006**

FILE: [Redacted]  
XFR-88-117-2040

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

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, Western Regional Processing Facility. The application was reopened and denied again by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The center director denied the application because of the applicant's criminal record.

On appeal from the initial denial, the applicant requested a copy of his file through the Freedom of Information. The Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) complied with the request May 5, 1994. The applicant did not respond to the final denial.

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).

The record reveals that the applicant has been convicted of the following crimes; Battery on a Person, Superior Court of California, County of Fresno, March 30, 1976, a misdemeanor; Driving while Drunk on a Highway, No Drivers License Superior Court of California, County of Fresno, October 6, 1976, misdemeanors; Hit and Run or Injury, Superior Court of California, County of Fresno, July 17, 1980, a misdemeanor; Illegal Entry (USC 1325) and Assault on a Federal Officer (violation USC 111), convicted on both charges; Driving Under the Influence, June 8, 1980, Superior Court of California, a misdemeanor; and, Driving Under the Influence With Prior Convictions. Superior Court of California, County of Fresno, a felony.

The applicant is ineligible for temporary resident status because of his misdemeanor and felony 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.

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.