

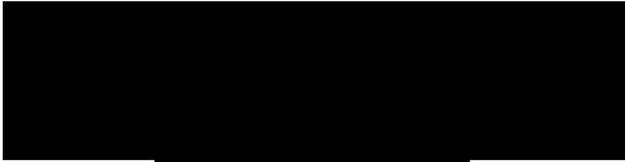


U.S. Citizenship  
and Immigration  
Services

64

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 31 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, Director  
Administrative Appeals Office

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

The director denied the application because the applicant had failed to provide criminal records.

On appeal, the applicant states he had never been arrested, but he submits a court report setting forth three convictions.

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).

"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).

Court records submitted by the applicant on appeal, reveal that the applicant was convicted in Superior Court, County of Tehama, State of California on July 16, 2001 on the following charges: violation of section 12500(a) of the California Vehicular Code (CVC), Unlawful to Drive Unless Licensed; violation of section 24600(a) of the CVC, Tail Lamps; and section 16028(a) of the CVC, Proof of Financial Responsibility.

The FBI report reveals that the applicant was also convicted of Hit and Run/ Property Damage on May 17, 1983 in Santa Ana, California and that on April 16, 1983, the applicant was arrested and charged with Hit and Run/Injury or Death Imm Rept of Fatality in Santa Ana, California. It is not clear that this is the same case as the May 17, 1983 conviction for Hit/Run Property. The final outcome of this charge is unknown, as the requested court disposition was not made available to the Citizenship and Immigration Services. The same is true of a December 31, 1978 Misdemeanor Drunk Driving on Highway charge in Santa Ana, California. The record also shows that the applicant was convicted of two misdemeanors as described above.

On July 15, 1992 and again on January 31, 2005, the applicant was advised of the above arrests and was allowed 30 days in which to submit the court disposition or evidence to overcome the director's finding.

The record does not contain any responses from the applicant.

The applicant has the burden to establish, with **affirmative evidence** that outstanding charges were dismissed or were in error. The applicant claims on appeal to having submitted the court disposition, however, the record does not contain any court disposition regarding the two unresolved charges. A statement made by the applicant is not affirmative evidence and fails to meet his burden.

An alien applying for temporary resident status had 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 temporary resident 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.