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U.S. Citizenship and Immigration Services

[redacted]

JUL 28 2004

FILE: [redacted] 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. All documents have 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 was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant purportedly failed to establish he had engaged in at least 90 days of qualifying agricultural employment in the twelve-month period ending on May 1, 1986. The director based his decision on a sworn statement supposedly given by the applicant, and on a finding that an affidavit in support of the applicant's agricultural claim contained a counterfeit signature. The director also noted that the applicant had been deported, and was therefore inadmissible to the United States.

On appeal, the applicant states that he did engage in the agricultural work that he had claimed. He concedes he was deported, and files a waiver application in an effort to overcome the inadmissibility.

Regarding the agricultural claim, there is no support in the record for the director's premise. The director refers to a sworn statement in which the applicant indicated he had worked in a non-agricultural job during the twelve-month period ending on May 1, 1986. The statement is not in the record. Furthermore, the director asserts the purported signature of the payroll supervisor for J.R. Norton Company appearing on the applicant's work documentation does not match the known exemplar. The known exemplar and the Information Digest containing the information about the farm and the payroll supervisor are not in the record.

Concerning the issue of inadmissibility, although the director received and fee-registered the waiver application, there is no indication that he adjudicated it.

An alien is also 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 applicant was arrested on April 14, 1989 under section 11377A of the California Health Code for Possession of Dangerous Drugs. He was later convicted of this offense. He is therefore inadmissible under section 212(a)(2)(A)(i)(II) of the Act. There is no waiver available to an alien inadmissible under that section 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. It is not clear that his agricultural claim was fraudulent. Additionally, his inadmissibility for having been deported could be waived. Nevertheless, his inadmissibility for having been convicted precludes favorable action on his application.

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