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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2006
XPO 88 171 04023

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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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

The director initially denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment *during* the twelve-month eligibility period ending May 1, 1986.

The case was forwarded to the LAU for consideration. On October 11, 2001, the case was remanded as the applicant, on appeal, had overcome the deficiency outlined by the director in his Notice of Decision.

The director withdrew the previous decision and reopened the proceedings for review and subsequently denied the application. The director denied the application because the applicant had failed to submit the requested court dispositions.

The regulation at 8 C.F.R. § 210.3(d)(3) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status.

"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 the term "felony," pursuant to 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).

"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. 8 C.F.R. § 245a.1(p).

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 Immigration and Nationality Act (the Act).

The FBI report dated July 21, 2004 reflects the applicant's criminal history in the state of California as follows:

1. On March 6, 1989, the applicant was arrested by the Pomona Police Department for felony assault with a deadly weapon other than a firearm, a violation of section 245(a) PC. The applicant was subsequently convicted of this offense and sentenced to serve time in jail.
2. On November 29, 1998, the applicant was arrested by the Sheriff's Office in Norwalk for being under the influence of a controlled substance, a violation of section 11550 H&S, and driving while license is suspended for driving under the influence, a violation of section 14601.2 VC.
3. On August 22, 2000, the applicant was arrested by the Irwindale Police Department for false identification to a specific peace officer, a violation of section 148.9 PC. The applicant was subsequently convicted of this misdemeanor offense and sentence to serve time in jail.

4. On October 16, 2000, the applicant was arrested by the Azusa Police Department for disorderly conduct, a violation of section 647 PC.

On October 5, 2004, the applicant was advised of his arrests above and was requested to submit the court dispositions for all arrests. The notice, however, was returned by the post office as unclaimed. On January 31, 2005, the director denied the application.

A review of the record reflects that the Notice of Decision was sent to the applicant's old address and, therefore, it was returned by the post office as unclaimed. Accordingly, on October 19, 2006, this office sent copies of the Notice of Decision and the notice dated October 5, 2004 to the applicant at his address of record. The applicant was given 45 days in which to submit evidence. To date, however, no correspondence has been presented by the applicant and the notices have not been returned by the post office as undeliverable.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by Citizenship and Immigration Services. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with such requirements specified in this part."

It is concluded the applicant has failed to provide the court dispositions necessary for the adjudication of his application.

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.