



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
XFR 88 240 1216

Office: CALIFORNIA SERVICE CENTER

Date: NOV 09 2006

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:

[REDACTED]

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

the application was initially denied because of adverse evidence acquired by the Immigration and Naturalization Service, or "the Service", now Citizenship and Immigration Services, or "CIS," regarding the applicant's claimed employment for [REDACTED]. The application was finally denied because the applicant failed to fully assist the Service in determining the dispositions of the applicant's criminal charges.

On appeal from the director's initial decision, the applicant reasserted his claimed employment. The applicant's counsel stated that without forensic analysis, it could not be determined that the signature on the applicant's documents was not genuine. The applicant's appeal still being in effect, in response to the center director's final decision, the applicant submitted additional court dispositions.

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).

The record reveals that the applicant submitted court dispositions for the following offenses listed on the FBI report:

- On February 11, 1996, the applicant was arrested and charged with Possession of a Controlled Substance, (methamphetamine) 11377(A) H&S and 1320 (B) PC (dismissed), case # [REDACTED]. The Madera, California court disposition submitted by the applicant indicates that the remaining methamphetamine charge was suspended, the applicant placed in a diversion program, and the case was ultimately dismissed.
- On August 31, 1996, the applicant was arrested and charged with Disorderly Conduct/ Under the Influence of Intoxicating Liquor, Drugs, etc, 647(f) PC, a misdemeanor, case # [REDACTED]. The Madera, California court disposition submitted by the applicant indicates that the applicant was found guilty of this misdemeanor on October 9, 1996, and was sentenced to 40 days in jail.
- On March 2, 1996, the applicant was arrested and charged with Disorderly Conduct/ Under the Influence of Intoxicating Liquor, Drugs, etc, 647(f)PC, a misdemeanor case number [REDACTED] and violation of 853.7 PC, Willfully Violates Written Promise to Appear in Court, a misdemeanor. The Madera, California court dismissed both charges.
- On April 19, 2004, the applicant was arrested and charged with one count of DUI Alcohol/Drugs, 23152a VC, and one count of Driving Susp. License, 12500a VC, both misdemeanors, case # [REDACTED].

The Madera, California court disposition submitted by the applicant indicates that on May 20, 2004, the applicant was found guilty of both charges. Additionally, the record shows that the applicant was found guilty of parole violation.

The record reflects that the applicant has submitted court dispositions of the charges presented to him by the director in the Notice of Intent to Deny. Therefore, the applicant has overcome that portion of the director's objections. However, the dispositions clearly establish the applicant is not eligible for temporary resident status.

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