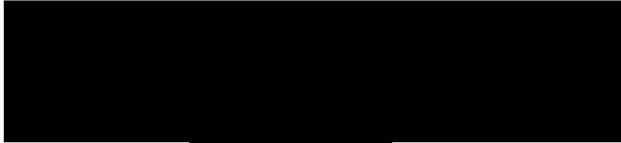


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 29 2008

XHO 89 088 05068

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. All documents have been returned to the National Benefits Center. 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 initially denied by the Director, Western Regional Processing Facility. The applicant subsequently appealed the director's decision and the matter came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the case and instructed the director to issue a new decision. The matter that is currently before the AAO on appeal is the denial that was recently issued by the Director, California Service Center. The appeal will be dismissed.

In the most recent denial, the director determined that the applicant failed to submit evidence establishing that he was not convicted of a felony offense, thereby failing to establish that he is statutorily eligible for temporary resident status under the provisions of the Special Agricultural Worker (SAW) program.

On appeal, the applicant provides additional documentation in an attempt to comply with the director's prior request for further information regarding his prior arrests and 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).

"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. § 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).

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), formerly section 212(a)(9) of the Act. Pursuant to 8 C.F.R. § 245a.18(c)(2)(i), this ground of inadmissibility, (crimes involving moral turpitude) may *not* be waived.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

The record reveals that the applicant has been arrest and convicted in the State of California as follows:

1. On November 21, 1991, the applicant was arrested and charged with *taking a vehicle without consent/vehicular theft*, a felony, in violation of section 10851 of the California Vehicle Code and with receiving known stolen property, a possible felony, in violation of section 496 of the California Penal Code (PC). The final court disposition for these offenses is unknown.

2. On December 21, 1998, the applicant was arrested and charged with *disorderly conduct/soliciting a lewd act*, a misdemeanor, in violation of section 647(a) PC and *trespassing/causing injury to property*, a misdemeanor, in violation of section 602(j) PC. On February 17, 1999, the applicant was convicted of the second offense and placed on probation for 24 months. Charges against the applicant for the first cited offense were dismissed.

On April 26, 2007, the director issued a notice of intent to deny, citing the applicant's record of arrests/convictions. The director notified the applicant that he may be ineligible for temporary resident status if he cannot establish that he has not been convicted of one felony or three misdemeanors. Accordingly, the applicant was asked to provide the final court dispositions for any offenses for which the outcome was not known, thereby indicating that the relevant offenses were those cited in No. 1 above. The applicant was given 30 days in which to provide the requested documentation. However, there is no evidence that the applicant responded to the director's request.

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."

In the present matter, the applicant has failed to provide the final court disposition for either of the offenses cited in No. 1 above, thereby precluding the AAO from being able to determine that the applicant has not been convicted of one felony or three misdemeanors. The AAO further notes that conviction of either of the offenses cited in No. 1 above may also make the applicant inadmissible as an alien who committed a crime(s) involving moral turpitude. *See In Re: [REDACTED]* (BIA Jan. 28, 2008), establishing that vehicle theft is a crime involving moral turpitude. As the applicant has failed to provide documents necessary for the adjudication of his application, he has failed to establish that he is eligible for temporary resident status.

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). By failing to provide the necessary documentation regarding his arrests and convictions, the applicant has failed to meet this burden.

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