U.S. Department of Homeland Security
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Washington, D.C. 20529-2090

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: LOS ANGELES Date: MAR 06 2009

XPO 88 168 04163

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit the requested court dispositions.

On appeal, the applicant asserts that he has not been convicted of three misdemeanors. The applicant submits court dispositions relating to his criminal history.

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).

An alien is 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 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act).

The FBI report, via a fingerprint analysis, dated July 28, 2006, reflects the applicant's criminal history in the state of California as follows:

1. On or about August 21, 2000, the applicant was arrested by the Sheriff's Office in San Bernardino for inflicting corporal injury upon a spouse/cohabitant.
2. On October 12, 2002, the applicant was arrested by the Ontario Police Department for possession of a controlled substance, driving under the influence with priors and driving with .08 percent or more alcohol in the blood.
3. October 13, 2002, the applicant was arrested by the Sheriff's Office for possession of a controlled substance.

On August 20, 2007, the director issued a Form I-72, requesting the applicant to submit the arrest reports and court dispositions for all arrests including the arrests mentioned above. In response, U.S. Citizenship and Immigration Services (USCIS) received a letter from a representative of the City of Ontario Police Department, who indicated that due to the nature of the offenses, the department would rather send the reports directly to the Los Angeles Office. The police department submitted:

- The arrest report regarding the applicant's arrest on August 20, 2000, for inflicting corporal injury upon a spouse/cohabitant, a violation of section 273.5(a) PC.
- The arrest report regarding the applicant's arrest on October 12, 2002 for driving under the influence, a violation of section 23152(a) VC, driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, and possession of a controlled substance – methamphetamine, a violation of section 11377(a) H&S.

On November 14, 2007, the director issued a Notice of Intent to Deny, advising the applicant of his failure to submit the requested court dispositions. The director also noted that although the police letter indicated that the arrests of October 12 and 13, 2002 were the same arrest, the controlled substance charge was added a day later. The applicant was given 30 days in which to submit the court dispositions.

A thorough review of the arrest reports of October 12 and 13, 2002, does in fact establish that the controlled substance offense is one and the same. The date and time of arrest and case number indicated on the arrest report from the San Bernardino County Sheriff's Department coincides with the arrest report from the Ontario Police Department.

The director, in denying the application on March 7, 2008, noted that no response to the Notice of Intent the Deny had been received. The record, however, does reflect that a response was received prior to the issuance of the director's decision. As such, the documentation submitted will be considered on appeal. In response, the applicant submitted a letter from the San Bernardino County Superior Court indicating that a search regarding the applicant's case revealed "that this file cannot be located at this time." The applicant also submitted a court disposition for Case no. [redacted] regarding three infraction convictions.

On appeal, the applicant submits a court disposition from the San Bernardino Superior Court for numbers two and three above. The court disposition indicates that on January 14, 2003, the applicant was convicted of violating section 23152(b) VC. The applicant was sentenced to serve two days in jail, ordered to pay a fine and attend an alcohol program and placed on probation for three years. The remaining offenses were dismissed. Case no. [redacted]

The applicant also submits an additional copy of the court disposition for Case no. [redacted] and a letter from the San Bernardino County Superior Court indicating that no criminal record was found under the applicant's name for an arrest on August 21, 2000.

The arrest report from the Ontario Police Department, however, clearly indicated that the applicant had been charged with violating section 273.5(a) PC. The burden is on the applicant to provide affirmative evidence that the charge has been dismissed. No evidence from the Ontario Police Department was submitted to corroborate court's notice.

Declarations by an applicant that he has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services. 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 an applicant for adjustment of status will be subject to verification by the USCIS. Failure by an 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 required by the examining immigration officer in accordance with such requirements specified in this part."

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, and is otherwise eligible for adjustment of status. 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.