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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



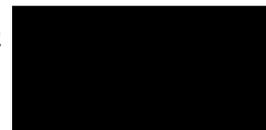
**U.S. Citizenship
and Immigration
Services**



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Date: **APR 12 2011** Office: CALIFORNIA SERVICE CENTER

FILE:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, California Service Center. The applicant appealed the denial to the Administrative Appeals Office (AAO).

The director denied the application for temporary resident status as a special agricultural worker because he found that the applicant had failed to establish that he had provided seasonal agricultural work for the requisite number of man-days. On appeal, the applicant indicates that he did not intend to apply under the Special Agricultural Worker program. The AAO remanded, noting that the director should render a new decision in conformance with the provisions of Section 245A of the Act.

However, the record reveals a basis of the applicant's ineligibility for temporary resident status that was not raised by the director, or by the AAO on remand. Therefore, the AAO reopened the application, *sua sponte*, pursuant to 8 C.F.R. § 210.2(g), providing the applicant with an opportunity to respond to the AAO's findings. The director may *sua sponte* reopen any adverse decision. Additionally, the director may certify any such decision to the AAO. See 8 C.F.R. § 210.2(h).

As noted in the Notice of Intent to Deny (NOID), the record contains a letter from the California Department of Justice dated April 24, 2008 indicating that the applicant was arrested on October 30, 1987 and subsequently convicted for *False Identification to a Peace Officer*, section 148.9 of the California Penal Code (CPC) (Case no. 506931-979489). He was arrested for the same offense on March 8, 1992, and subsequently convicted (Case No. NM9203091) and again on June 3, 1992 (Case no. 506931 1395809) and subsequently convicted.

The record also contains a letter from the City of Buena Park, California indicating that the applicant was arrested for *Driving under the Influence*, section 23152(a) of the California Vehicle Code (CVC), on December 22, 1982 and again on February 9, 1984. While the final court dispositions for these arrests have not been submitted, the applicant testified under oath on September 18, 2007 that he was arrested for *Driving Under the Influence* in 1981, 1983 or 1984 and in 1992 and that he was fined for each offense. Furthermore, the applicant admitted the charges noted above for *False Identification to a Peace Officer*.

Therefore, the applicant's multiple misdemeanor convictions render him ineligible for temporary resident status pursuant to both section 210 and 245A of the Act. Within the special agricultural worker and legalization programs, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States. The applicant was informed of the above grounds of denial on March 3, 2011 and given 21 days to respond to the notice. No response has been received.

The alien has failed to establish by a preponderance of the evidence that he is eligible for temporary resident status as a special agricultural worker, or as a temporary resident. 8 C.F.R. §§

210.3(d)(3) and 245A.2(c)(1). Furthermore, he has failed to address or rebut the findings of USCIS regarding his criminal record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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