



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
XFR 88 165 2116

Office: CALIFORNIA SERVICE CENTER

Date: NOV 19 2007

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. All documents have been returned to the office that originally decided 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 termination of the applicant's temporary resident status as a special agricultural worker by the Director, Western Service Center, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status as a special agricultural worker because the applicant failed to provide the final court disposition of all arrests in the United States since initial entry.

On appeal, the applicant submits court documents relating to an arrest.

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, 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 Act.

The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in Fresno, California, on September 10, 1983, and charged with receiving stolen property.

On November 28, 1990, the director informed the applicant of his intent to terminate the applicant's temporary resident status unless he provided the final court disposition of the arrest detailed above. The applicant, in response, requested an extension of time in order to obtain the requested court documents.

On January 27, 1992, over a year after the applicant requested additional time to obtain court documents reflecting the final court disposition of his arrest, the director terminated the applicant's temporary resident status because the applicant failed to provide the final court disposition of his arrest on September 10, 1983.

On appeal, the applicant submits a document from the Justice Court of the Parlier Judicial District, County of Fresno, State of California, indicating that the applicant was convicted on

February 14, 1992, of driving under the influence of alcohol in violation of section 23152(a) of the California Vehicle Code, a misdemeanor, driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) of the California Vehicle Code, a misdemeanor, and driving without a valid driver's license in violation of section 12500(a) of the California Vehicle Code, a misdemeanor. The court placed the applicant on revocable release for a period of five years and ordered him to serve 12 days in jail.

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 Service. 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."

The applicant, on appeal, has submitted the final court disposition of a 1984 arrest. However, he failed to provide the final court disposition of his arrest in Fresno, California, on September 10, 1983, on the charge of receiving stolen property.

Furthermore, the applicant has been convicted of three misdemeanors deriving from his 1984 arrest. Therefore, the applicant is also ineligible for temporary resident status due to his record of three misdemeanor convictions. 8 C.F.R. § 210.3(d)(3).

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.