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FILE: [REDACTED]  
XPH 88 044 01039

Office: LOS ANGELES

Date: **AUG 13 2008**

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 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 denied by the Field Office Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant's conviction of three misdemeanor offenses rendered him statutorily ineligible for temporary resident status under the provisions of the Special Agricultural Worker (SAW) program.

On appeal, the applicant states that he had not been arrested or convicted at the time he filed his Form I-700 application and claims that he was unaware that his misdemeanor convictions would effect his eligibility for the immigration benefit sought.

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).

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.

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 on June 4, 1997 the applicant was convicted of the following offenses in the State of California: 1) *driving under the influence of .08% or more of alcohol*, a misdemeanor in violation of section 23152(b) of the California Vehicle Code (VC); 2) *willful cruelty to a child*, a misdemeanor in violation of section 273(b) of the California Penal Code; and 3) *driving without a driver's license*, a misdemeanor in violation of section 12500(a) VC. (Case No. [REDACTED]).

On August 29, 2007, the director issued a notice of intent to deny (NOID), noting that the evidence the applicant previously submitted in support of his claimed employment for [REDACTED], farm labor contractor, was deficient and did not establish that the applicant was employed for the requisite number of man days during the statutory period. See 8 C.F.R. 210.3(a). The director also noted that on February 9, 1997, the applicant was arrested and charged with a felony offense for which a disposition was not provided.

In response to the NOID, the applicant provided court documents showing that he was convicted of the three misdemeanor offenses cited above. It is noted that the applicant did not address the issue of his agricultural employment, which served as the other basis for the NOID.

On October 9, 2007, the director denied the application, concluding that the applicant was rendered statutorily ineligible for temporary resident status as a special agricultural worker due to his three misdemeanor convictions.

On appeal, the applicant states that at the time he filed his application, he had never been arrested. However, it is the applicant's criminal record at the time the application is adjudicated that determines his eligibility. The fact that the applicant was convicted of three misdemeanors after he filed his application is irrelevant. Additionally, the director did not claim that the applicant had multiple arrests; rather, the director's adverse decision was based on the applicant's multiple convictions, which, based on the court records, stemmed from a single arrest.

The applicant also claims that the judge who presided over his criminal proceedings told him that his "arrest would be deferred" if he complied with all of the judge's orders. However, a review of the relevant court documents indicates that the applicant's interpretation of the events surrounding his arrest and convictions was inaccurate. First, there is no such thing as deferring an arrest. Rather, the record shows that the imposition of the applicant's sentence was suspended, post conviction, and instead, the applicant was placed on probation. Second, the court records show that the applicant was advised that he may be subject to adverse immigration consequences if convicted prior to pleading guilty to all three of the offenses discussed above.

Therefore, the AAO affirms the director's decision that the applicant is ineligible for temporary resident status because he has been convicted of three misdemeanors. 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.

Lastly, while not addressed in the director's denial, the record indicates that the applicant provided deficient documentation and therefore failed to establish that he performed seasonal agricultural services in the United States for at least 90 man-days during the twelve-month period ending May 1, 1986.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). Therefore, based on this additional ground of ineligibility discussed above, this application cannot be approved.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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