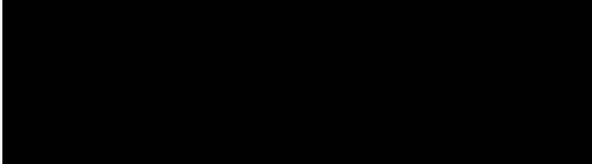




U.S. Citizenship
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Services

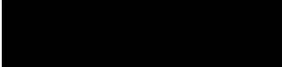
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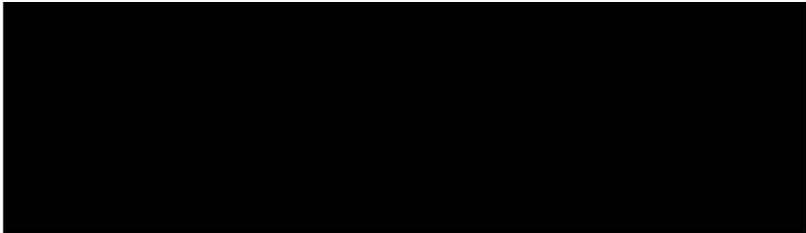
Office: CALIFORNIA SERVICE CENTER

Date: OCT 06 2008

XFR 88 137 02246

IN RE:

Applicant:



APPLICATION: Application for Temporary Resident Status under 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. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status as a special agricultural worker that was initially denied by the Director, Western Service Center and came before the Administrative Appeals Office (AAO) on appeal. The matter was remanded by the AAO and the application was subsequently denied again by the Director, California Service Center. The case is again before the AAO on appeal and the appeal will be dismissed.

Although the electronic record shows that the director of the Western Service Center initially denied the application on November 24, 1991, the basis of the denial cannot be determined with certainty as the record does not contain a copy of this decision.

On appeal from the initial denial, the applicant requested a copy of the record of proceedings. The record shows that the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) complied with the applicant's request and mailed a copy of the record to the applicant on March 26, 1993.

The AAO subsequently remanded the case on July 17, 1996 as the record did not contain a copy of the notice of decision previously issued on November 24, 1991.

The director of the California Service Center reopened the matter and determined that the applicant had failed to assist Citizenship and Immigration Services or CIS (formerly the Immigration and Naturalization Service or the Service) as required under 8 C.F.R. § 210.3(b)(3), because he did not provide requested court documents reflecting the disposition of criminal charges that had been brought against him. Consequently, the director concluded that the applicant was not eligible to adjust to temporary resident status as a special agricultural worker and denied the application again on October 7, 2007.

The record shows that the applicant has subsequently failed to submit a statement, brief, or evidence addressing the basis of denial cited in the most recent notice of decision issued on October 7, 2007. Therefore, the record must be considered complete.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Immigration and Nationality Act (Act) and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service [or its successor CIS]. The applicant must agree to fully cooperate in the verification process. The regulation at 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 the Service [or its successor CIS]. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, the regulation at 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.

The first issue to be examined in this proceeding is whether the applicant has submitted sufficient documentation relating to his criminal history to determine that he is admissible to the United States under the provisions of section 210(c) and section 212(a) of the Act is otherwise eligible for adjustment of status as required by 8 C.F.R. § 210.3(a).

The record contains a report from the Federal Bureau of Investigation (F.B.I.) that is dated May 29, 2007, which based upon fingerprint comparison reflects the following relating to the applicant's criminal history:

- An arrest under the name [REDACTED] on January 2, 1988 by the Sheriff's Office of Hanford, California for a misdemeanor violation of section 10851(a), Take a Vehicle Without the Owner's Consent, of the California Vehicle Code. The F. B. I. report reflects that prosecution of this charge was subsequently declined because of a lack of probable cause and evidence.
- An arrest under the name [REDACTED] on December 7, 1993 by the Sheriff's Office of Hanford, California for an unspecified violation involving theft. The F.B.I. report reflects that the applicant was convicted of this unspecified offense and sentenced to a day in jail.
- An arrest under the name [REDACTED] on September 25, 1997 by the Sheriff's Office of Hanford, California for a misdemeanor violation of section 10980(c)(1), Commission of Fraud to Obtain Aid, of the California Welfare and Institutions Code, and a felony violation of section 181, Perjury, of the California Penal Code. The F.B.I. report reflects that these particular charges were subsequently dismissed in the furtherance of justice.
- An arrest under the name [REDACTED] on July 29, 2003 by the Sheriff's Office of Hanford, California for a violation of section 243(e)(1), Battery Against a Spouse or Cohabitant, of the California Penal Code. The F.B.I. report reflects that the applicant was subsequently convicted of a misdemeanor violation of section 242, Battery, of the California Penal Code and sentenced to thirty days in jail and four years of probation.
- An arrest under the name [REDACTED] on October 10, 2003 by the Sheriff's Office of Hanford, California for a violation of section 242, Battery, of the

California Penal Code. The F.B.I. report does not reveal the disposition of this particular charge.

- **An arrest under the name** [REDACTED] on March 18, 2006 by the Sheriff's Office of Hanford, California for a violation of section 243(d), Battery With Serious Bodily Injury, of the California Penal Code and section 1203.2, Probation Revocation, of the California Penal Code. The F.B.I. report does not reveal the dispositions of these particular charges.

Subsequent to the AAO's remand on July 17, 1996 requiring that a new decision be issued in this matter the director of the California Service Center reopened the proceedings on June 20, 2007. In a notice issued on this same date, the director informed the applicant of his criminal history as cited in the F.B.I. report discussed above and requested that he provide documents to establish the disposition of the multiple criminal violations with which he had been charged. The director further informed the applicant that it was CIS' intent to deny his application if he did not provide the requested documentation within thirty days from the date the notice was issued. The record shows that the applicant failed to respond to this notice.

The director determined that the applicant had failed to provide requested court documents relating to his criminal history as required under 8 C.F.R. § 210.3(b)(3), and denied the application on October 2, 2007. As of the date of this decision, the applicant has failed to submit any material addressing the basis of this most recent denial.

The F.B.I. report demonstrates that misdemeanor and felony charges brought against the applicant on January 2, 1988 and September 25, 1997, respectively, were dismissed. However, the record contains no documents relating to the disposition of misdemeanor charges brought against applicant on July 29, 2003, October 10, 2003, and March 18, 2006, respectively. It is concluded the applicant has failed to provide documents necessary for the adjudication of his application. 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 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 and remains ineligible to adjust to temporary residence as a special agricultural worker on this basis.

Although the director made no determination as to whether the applicant was ineligible as a result of criminal convictions, this shall be the next issue to be examined in these proceedings.

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 [or other office] 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 (9th 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).

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).

The regulations at 8 C.F.R. Part 210 do not contain a definition for either a felony or a misdemeanor. However, definitions for both of these terms are provided within the legalization program in the regulations at 8 C.F.R. Part 245a.

“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. Part 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).

As previously discussed, the F.B.I. report dated May 29, 2007 reflects that the applicant was arrested under the name [REDACTED] on July 29, 2003 by the Sheriff’s Office of Hanford, California for a violation of section 243(e)(1), Battery Against a Spouse or Cohabitant, of the California Penal Code. The F.B.I. report reflects that the applicant was subsequently convicted of a misdemeanor violation of section 242, Battery, of the California Penal Code and sentenced to thirty days in jail and four years of probation. The record contains court records that had been previously submitted by the applicant which reflect the following additional information relating to his criminal history:

- A conviction under the name [REDACTED] in case number Cr. 00750 for a misdemeanor violation of section 647(f), Disorderly Conduct, of the California Penal Code in the Avenal Judicial District of the Justice Court of California, Kings County on December 7, 1984.
- Convictions under the name [REDACTED] in case number Cr. [REDACTED] for a misdemeanor violation of section 23152(a), Driving Under the Influence, of the California Vehicle Code and a misdemeanor violation of section 12500(a), Driving Without a License, of the California Vehicle Code in the Avenal Judicial District of the Justice Court of California, Kings County on March 1, 1985.

Convictions under the name [REDACTED] in case number Cr. [REDACTED] for a misdemeanor violation of section 23152(a), Driving Under the Influence, of the California Vehicle Code, a misdemeanor violation of section 12500(a), Driving Without a License, of the California Vehicle Code, and a misdemeanor violation of section 40508(a), Failure to Appear, of the California Vehicle Code in the

Avenal Judicial District of the Justice Court of California, Kings County on October 16, 1986.

- Convictions under the name [REDACTED] in case number Cr. [REDACTED] for a misdemeanor violation of section 31, False Information to a Peace Officer, of the California Vehicle Code and a misdemeanor violation of section 12500(a), Driving Without a License, of the California Vehicle Code in the Avenal Judicial District of the Justice Court of California, Kings County on November 26, 1986.

In addition, the record contains a letter containing the letterhead of the Kings County Sheriff's Office in Hanford, California that reflects a search of that office's Criminal Index Files demonstrated that the applicant has been arrested under the name [REDACTED] as follows:

- An arrest on June 28, 1986 for a misdemeanor violation of section 12951(a), Driving Without a Valid License, of the California Vehicle Code, a misdemeanor violation of section 40508(a), Failure to Appear, of the California Vehicle Code, and other lesser vehicular infractions.
- An arrest on August 16, 1986 for a misdemeanor violation of section 21352(a), Driving Under the Influence, of the California Vehicle Code.
- An arrest on October 8, 1986 for a misdemeanor violation of section 21352(a), Driving Under the Influence, of the California Vehicle Code, a misdemeanor violation of section 21352(b), Driving With Blood Alcohol Content of 0.08% or More, of the California Vehicle Code, a misdemeanor violation of section 12500(a), Driving Without a License, of the California Vehicle Code, a misdemeanor violation of section 647(f), Disorderly Conduct, of the California Penal Code, a misdemeanor violation of section 853.7, Failure to Appear, of the California Penal Code, and a lesser criminal infraction under the California Penal Code.
- An arrest on November 13, 1986 for four separate misdemeanor violations of section 12500(a), Driving Without a License, of the California Vehicle Code, a misdemeanor violation of section 40508(a), Failure to Appear, of the California Vehicle Code, and a misdemeanor violation of section 31, False Information to a Peace Officer, of the California Vehicle Code (appears related to case number CR 1731 cited above).
- An arrest on January 18, 1987 for a misdemeanor violation of section 40508(a), Failure to Appear, of the California Vehicle Code, a misdemeanor violation of section 40508(b), Failure to Pay Bail, of the California Vehicle Code, a misdemeanor violation of section 12951(a), Driving Without a Valid License, of the

California Vehicle Code, and a lesser vehicular infraction of the California Vehicle Code.

- An arrest on January 3, 1989 for a misdemeanor violation of section 40508(b), Failure to Pay Bail, of the California Vehicle Code and lesser vehicular infractions of the California Vehicle Code.
- An arrest on October 22, 1989 for two separate misdemeanor violations of section 12500(a), Driving Without a License, of the California Vehicle Code, a misdemeanor violation of section 40508(a), Failure to Appear, of the California Vehicle Code, a misdemeanor violation of section 40508(b), Failure to Pay Bail, of the California Vehicle Code, and lesser vehicular infractions of the California Vehicle Code.
- An arrest on April 20, 1991 for a misdemeanor violation of misdemeanor violations of section 12500(a), Driving Without a License, of the California Vehicle Code, a misdemeanor violation of section 40508(b), Failure to Pay Bail, of the California Vehicle Code, and lesser vehicular infractions of the California Vehicle Code.

While it evident that some of these arrests relate to the applicant's misdemeanor convictions cited above in the Avenal Judicial District of the Justice Court of California, Kings County on October 16, 1986 and November 26, 1986, respectively, the record contains no documentation to establish the disposition of all charges brought in these arrests. Nor does the record contain any indication that the director of the California Service Center requested that the applicant provide documents relating to the disposition of criminal charges brought against the applicant in any of these particular arrests.

Nevertheless, the record contains sufficient evidence to establish that the applicant has been convicted of nine separate misdemeanor offenses. The applicant is ineligible for temporary resident status as a special agricultural worker because he has been convicted of three or more misdemeanors pursuant to 8 C.F.R. § 210.3(d)(3). Consequently, the applicant is ineligible for temporary residence under the provisions of section 210 of the Act on this basis as well.

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