

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

LI



FILE:

XPB 88 202 02023

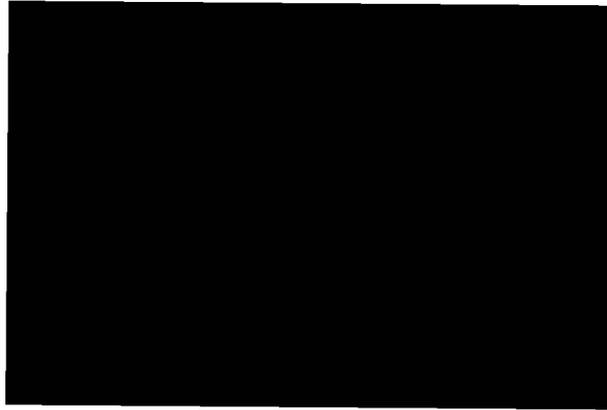
Office: CALIFORNIA SERVICE CENTER

Date:

SEP 29 2008

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.

A handwritten signature in ink, appearing to read "Robert P. Wiemann".

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.

The director of the Western Service Center determined that the applicant was ineligible to adjust to temporary residence pursuant to 8 C.F.R. § 210.3(d)(3) because he had been convicted of three misdemeanors and three felonies. The director further determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) [formerly section 212(a)(9)] of the Immigration and Nationality Act (Act) because he had been convicted of grand theft, a crime involving moral turpitude. The director concluded that the applicant was inadmissible as well as ineligible as a result of his criminal convictions and initially denied the application on August 7, 1990.

On appeal from the initial denial, the applicant disputed that he had been convicted of the criminal offenses cited in the initial notice of decision and claimed that he was being blamed for offenses committed by a person named [REDACTED]. The applicant also requested a copy of the record of proceedings.

The AAO subsequently remanded the case on May 5, 1993 in order to comply with the applicant's request for a copy of the record. 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 May 26, 1993.

The director of the California Service Center subsequently reopened the matter and determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) [formerly section 212(a)(9)] of the Act because he had been convicted of grand theft, a crime involving moral turpitude. The director further determined that such ground of inadmissibility could not be waived pursuant to 8 C.F.R. § 210.3(e)(3)(i). 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 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).

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).

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) [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 first issue to be examined in this proceeding is whether the applicant is admissible to the United States under the provisions of section 210(c) and section 212(a) of the Act.

The record contains a report from the Federal Bureau of Investigation (F.B.I.) that is dated February 15, 2007, which based upon fingerprint comparison reflects the following relating to the applicant's criminal history:

- An arrest under the name [REDACTED] on September 8, 1958 by the United States Border Patrol in Tucson, Arizona for an unspecified immigration violation. The F.B.I. report reflects that the applicant was allowed to voluntarily return to Mexico on this same date.
- An arrest under the name [REDACTED] on August 18, 1960 by the United States Border Patrol in Tucson, Arizona for an unspecified immigration violation.

The F.B.I. report reflects that the applicant was granted voluntarily departure to Mexico on this same date.

- An arrest under the name [REDACTED] on September 16, 1960 by the United States Border Patrol in Nogales, Arizona for an unspecified immigration violation. The F.B.I. report reflects that the applicant was subsequently granted voluntarily departure to Mexico on September 30, 1960.
- An arrest under the name [REDACTED] on October 9, 1960 by the United States Border Patrol in Tucson, Arizona for a misdemeanor violation of 8 U.S.C. § 1325, Illegal Entry of Alien. The F.B.I. report reflects that the applicant was subsequently convicted of this misdemeanor offense on October 26, 1960 and sentenced to thirty days in jail.
- An arrest under the name [REDACTED] on February 24, 1961 by the Sheriff's Office of Nogales, Arizona for a felony violation of section 13-661, Grand Theft, of the Arizona Revised Statutes. The F.B.I. report reflects that the applicant was convicted of this felony offense on April 3, 1961 and sentenced to a jail term of no less than one year and no more than two years.
- An arrest under the name [REDACTED] on August 20, 1962 for an unspecified immigration violation. The F.B.I. report reflects that the applicant was subsequently convicted of a misdemeanor violation of 8 U.S.C. § 1326, Illegal Reentry of Alien on September 8, 1962, sentenced to a year in jail, and granted voluntarily departure to Mexico on June 27, 1963.
- An arrest under the name [REDACTED] on February 18, 1965 for a felony violation of 18 U.S.C. § 911, False Claim to United States Citizenship. The F.B.I. report reflects that the applicant was convicted of this felony offense on March 27, 1965, sentenced to one year and six months in jail, and deported to Mexico on May 31, 1966.
- An arrest under the name [REDACTED] on March 11, 1968 for an unspecified immigration violation. The F.B.I. report reflects that the applicant was subsequently convicted of a felony violation of 8 U.S.C. § 1326, Illegal Reentry of Alien on March 18, 1968 and sentenced to a year and two months in jail.
- An arrest under the name [REDACTED] on March 9, 1972 by the United States Border Patrol in San Ysidro, California for a misdemeanor violation of 8 U.S.C. § 1325, Illegal Entry of Alien. The F.B.I. report reflects that was subsequently convicted of this misdemeanor offense on March 31, 1972 and sentenced to six months in jail.

Subsequent to the AAO's remand on May 5, 1993, the director of the California Service Center reopened the proceedings on October 30, 2007. In a notice issued on this same date, the director determined that the applicant was inadmissible to the United States under section 212(a)(2)(A)(i)(I) [formerly section 212(a)(9)] of the Act because of his prior conviction for a crime involving moral turpitude, grand theft, on April 3, 1961. The director further determined that such ground of inadmissibility could not be waived pursuant to 8 C.F.R. § 210.3(e)(3)(i). Therefore, 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.

On appeal from the initial denial of his application, the applicant claimed that he was being blamed for offenses committed by a person named [REDACTED]. However, the applicant failed to submit any evidence to support his claim. Moreover, the applicant has failed to submit any material addressing the basis of the most recent denial in these proceedings.

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). Clearly, the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) [formerly section 212(a)(9)] of the Act as a result of his conviction for a crime involving moral turpitude, grand theft, and such ground of inadmissibility cannot be waived pursuant to 8 C.F.R. § 210.3(e)(3)(i). The applicant has failed to establish that he is admissible 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 under 8 C.F.R. § 210.3(d)(3) 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).

As previously discussed, the F.B.I. report dated February 15, 2007 reflects that the applicant has been convicted of the following:

- A misdemeanor violation of 8 U.S.C. § 1325, Illegal Entry of Alien, on October 26, 1960.
- A felony violation of section 13-661, Grand Theft, of the Arizona Revised Statutes on April 3, 1961.

- A misdemeanor violation of 8 U.S.C. § 1326, Illegal Reentry of Alien, on September 8, 1962.
- A felony violation of 18 U.S.C. § 911, False Claim to United States Citizenship, on March 27, 1965.
- A felony violation of 8 U.S.C. § 1326, Illegal Reentry of Alien, on March 18, 1968.
- A misdemeanor violation of 8 U.S.C. § 1325, Illegal Entry of Alien, on March 31, 1972.

The record contains sufficient evidence to establish that the applicant has been convicted of three separate misdemeanor offenses as well as three separate felony offenses. The applicant is ineligible for temporary resident status as a special agricultural worker because he has been convicted of three or more misdemeanors and one or more felonies pursuant to 8 C.F.R. § 210.3(d)(3). Consequently, the applicant is ineligible for temporary residence as a special agricultural worker 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.