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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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FILE:

[REDACTED]
XBA-89-051-5051

Office: TEXAS SERVICE CENTER

Date:

APR 21 2009

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. 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 blue ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Temporary Resident Status as a Special Agricultural Worker was denied by the Director, Texas Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Director, Western Regional Processing Facility, initially denied the application on June 8, 1992. The applicant appealed the decision to the Legalization Appeals Unit (now the Administrative Appeals Office or AAO). The LAU determined that the record of proceedings did not contain the director's decision and remanded the matter for a decision on the merits of the application. On February 10, 2006, the Director, Texas Service Center, issued a new decision to deny the application. The director determined that the applicant did not establish his admissibility to the United States because he failed to submit a court disposition related to his November 11, 1979 arrest in Bakersfield, California for *Hit & Run/Death or Injury*.

On appeal, counsel asserts that he was informed by the court that there are no court records available because they are destroyed after ten years. Counsel states that he has obtained a copy of the applicant's record from the California Department of Justice. Counsel notes that the applicant was convicted of *Hit & Run Property Damage* and sentenced to 36 months probation.

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).

A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on November 11, 1979 he was arrested by the Sheriff's Department, Bakersfield, California, and charged with *Hit & Run/Death or Injury* in violation of section 20001 of the California Vehicle Code. The applicant furnished a California Department of Justice criminal history transcript as evidence of the disposition for this arrest. The criminal history transcript shows that the applicant was convicted on November 29, 1979 of *Hit and Run: Property Damage* in violation of section 20002(a) of the California Vehicle Code.

Section 20002(a) of the California Vehicle Code (West 1971) provides:

(a) The driver of any vehicle involved in an accident resulting in damage to any property including vehicles shall immediately stop the vehicle at the scene of the accident and shall then and there either:

(1) Locate and notify the owner or person in charge of such property of the name and address of the driver and owner of the vehicle involved, or;

(2) Leave in a conspicuous place on the vehicle or other property damaged a

written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol.

Any person failing to comply with all the requirements of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not to exceed six months or by a fine of not to exceed five hundred dollars (\$500) or by both.

As previously stated, in order to be eligible for temporary resident status as a special agricultural worker, an alien must establish that he is admissible to the United States as an immigrant. Section 210(a)(1)(C) of the Act, 8 U.S.C. § 1160(a)(1)(C). Section 212(a) of the Act, 8 U.S.C. § 1182, provides the classes of aliens ineligible for admission to the United States. The director determined that the applicant failed to establish that he is admissible to the United States because he did not submit a court disposition related to his November 11, 1979 arrest in Bakersfield, California for *Hit & Run/Death or Injury*. The applicant has now established, through his California Department of Justice criminal history transcript, that he was convicted of the lesser offense, *Hit and Run: Property Damage*, in violation of section 20002(a) of the California Vehicle Code, as cited above. The AAO has reviewed the above statute and finds that the offense does not render the applicant inadmissible to the United States.

The AAO observes that since the maximum term of imprisonment for a violation of this statute is not to exceed six months, the applicant has been convicted of a misdemeanor offense as defined at 8 C.F.R. § 245a.1(o). 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 applicant's one misdemeanor conviction does not render him ineligible for temporary resident status.

The AAO notes that the California Department of Justice criminal history transcript reveals that the applicant was arrested on April 24, 1978 and charged with *Illegal Entry* in violation of section 275 of the Act, 8 U.S.C. § 1325. According to this record, the applicant voluntarily departed to Mexico after apprehension. Pursuant to Section 240B(a)(1) of the Act, 8 U.S.C. § 1229c(a)(1), the Attorney General [now Secretary, Department of Homeland Security] may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240 or prior to the completion of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) [multiple criminal convictions] or section 237(a)(4)(B) [terrorist activities]. Therefore, the AAO will not make a finding of inadmissibility based on this arrest.

In conclusion, the applicant is not inadmissible to the United States. Further, he has been convicted of only one misdemeanor. He is therefore not ineligible for temporary resident status. See 8

C.F.R. § 210.3(d)(3). The denial of temporary residence is withdrawn. The application for temporary resident status is approved contingent upon required criminal and background checks.

ORDER: The appeal is sustained.