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U.S. Department of Homeland Security
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Washington, DC 20529 -2090

U.S. Citizenship and Immigration Services

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JAN 2 6 2009

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

XSI 89 046 3103

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, California Service Center. The director subsequently reopened and again denied the application. The applicant appealed the denial to the Administrative Appeals Office (AAO). The AAO remanded. On remand, the director denied the application and returned the record to the AAO for resolution of the appeal. The appeal will be dismissed.

The application was initially denied because the applicant failed to demonstrate that he had performed at least 90 man-days of qualifying agricultural employment during the 12-month period ending May 1, 1986. The director reopened and gave the applicant the opportunity to submit additional evidence to rebut derogatory information. The applicant submitted a new Form I-705 affidavit of qualifying employment and the director denied the application for failing to submit the requested evidence. The AAO remanded with instruction to the director to enter the derogatory evidence into the record. On remand, the director notified the applicant of unresolved criminal arrests, and gave the applicant the opportunity to submit court documents disposing of the charges. The applicant did not submit the evidence requested, the director denied the application and returned the record to the AAO for adjudication of the appeal.

An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3).

The applicant was arrested by the Sheriff's Office Salinas on December 5, 1997 and charged with *Battery on Spouse, Cohabitant or Former Spouse; Threaten to Commit Crime with Intent to Terrorize* (case no. [redacted]

The applicant was arrested by the Sheriff's Office Salinas on May 30, 1998 and charged with *Possession of Narcotic Controlled Substance; Driving Under Influence Alcohol/Drugs; Driving Under Influence Alcohol/.08%; Driving without License* (case no. [redacted]

The director notified the applicant of these arrests and requested the applicant to submit evidence of the court dispositions. Because the applicant has failed to submit the requested evidence, he has not established that he is eligible for temporary residence. Section 210(a)(3)(B)(ii) of the Act, 8 U.S.C. § 1160(a)(3)(B)(ii) provides that the alien may not adjust status to permanent residence, or that USCIS may terminate the temporary residence of any alien who has been convicted of any felony or of three or more misdemeanors committed in the United States. The alien has failed to establish by a preponderance of the evidence that he is eligible for legalization as a special agricultural worker. 8 C.F.R. § 210.3(d)(3).

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