

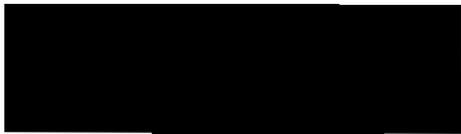
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U.S. Citizenship  
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4

FILE: [REDACTED]  
XHP-89-082-4102

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 04 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:

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.

  
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, California Service Center. 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. On May 6, 1992 United States Citizenship and Immigration Services (USCIS) issued a Notice of Intent to Deny (NOID) noting that it had received derogatory information regarding [REDACTED] the affiant submitting evidence in support of the applicant's eligibility. The application was then denied on July 17, 1992 for failure to respond to the NOID. On August 14, 1992 the applicant filed an appeal to the denial which was forwarded to the Legalization Appeals Unit (LAU). The LAU remanded with instructions 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 director also noted that [REDACTED] the farm labor contractor listed as the primary affiant on Form I-705, was convicted on April 3, 1989 in United States District Court, Eastern District of California, of violating 8 U.S.C. 1160(b)(7)(ii). This criminal section of law relates to fraudulently preparing and/or selling Form I-700's and I-705's in violation of IRCA of 1986. Accordingly, the director noted that the applicant's evidence was not credible. The applicant did not submit the evidence requested regarding the criminal charges and he did not rebut the director's findings regarding the Form I-705 affiant. Thus, 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 Norwalk on June 27, 1992 and charged with *DUI Resulting in Bodily Injury* (case no. [REDACTED]), and *Hit and Run Causing Death or Injury* (case no. [REDACTED]).

The applicant was arrested by the Sheriff's Office Norwalk on May 1, 2000 and charged with *Child Endangerment--DWI* (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). Furthermore, he has failed to address or rebut the findings of USCIS regarding the testimony and credibility of [REDACTED] the principal affiant in this case.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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