

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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

APR 01 2010

FILE:

XOX 89 036 2047

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:

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:

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.

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant failed to establish that he performed at least 90 man days of qualifying agricultural employment during the eligibility period.

On appeal, the applicant submits an original statement from the Social Security Administration indicating that he earned \$9,001 in 1985 and \$19,373 in 1986 at agricultural establishments.

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, provided he is otherwise admissible under the provisions of section 210(c) of the Act and is 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).

The applicant overcame the director's basis for denying his application. Nonetheless, the application is not approvable.

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).

"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 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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The record reflects that the applicant was arrested or convicted of the following offenses for which there is incomplete or missing information:

- On July 19, 1980, the San Diego police arrested the applicant and charged him with *sodomy with a person under 14 years or with force* in violation of section 286(c) of the California Penal Code and *sodomy in concert with force* in violation of section 286(d) of the California Penal Code and *oral copulation: -14/etc or by force/etc* in violation of section 288A(c) of the California Penal Code.

- On November 12, 1984, the applicant was arrested in Ventura, California and charged with a violation of California Penal Code section 148.9, *false identification to a police officer*, a misdemeanor. The applicant was convicted of this offense by the Superior Court of Ventura County [REDACTED]. He was given a five day sentence and 36 months probation.
- On June 26, 1990, the applicant was arrested in Ventura California and charged with *assault with a deadly weapon* in violation of section 245(a)(1) of the California Penal Code and *battery on person* in violation of section 242 of the California Penal Code. The charges were dismissed for lack of sufficient evidence.
- On July 4, 2002, the applicant was arrested and charged with *driving under the influence of alcohol and drugs* and *driving under the influence of alcohol*. He was convicted by the Superior Court of Simi Valley of a violation of California Vehicle Code section 23152(b), *unlawful to operate vehicle with blood alcohol level above .08 percent*, a misdemeanor. [REDACTED]. On August 9, 2002, the applicant was convicted, sentenced to two days in jail, fined and given 36 months probation.
- On September 27, 2002, the applicant was arrested in Ventura, California and charged with *driving while under the influence of alcohol*, a violation of section 23152(a) of the California Vehicle Code, and *unlawful to operate vehicle with blood alcohol level above .08 percent*, in violation of section 23152(b) of the California Vehicle Code.
- On April 3, 2009, the applicant was arrested in Oxnard, California and charged with *driving while under the influence of alcohol*, a violation of section 23152(a) of the California Vehicle Code, and *unlawful to operate vehicle with blood alcohol level above .08 percent*, in violation of section 23152(b) of the California Vehicle Code.
- On October 22, 2009, the applicant was arrested in Ventura, California and charged with *driving while license suspended*, in violation of section 14601.2(a) of the California Vehicle Code; *driving while under the influence of alcohol or drugs* in violation of section 23152(a) of the California Vehicle Code; *driving with a blood alcohol level above .08 percent* in violation of section 23152(b) of the California Vehicle Code; and *tampering with or circumventing operation of ignition interlock device* in violation of section 23247(a) of the California Vehicle Code. The applicant was sentenced to 10 days in jail.

On January 21, 2009, the AAO sent a notice to the applicant informing him of its intent to dismiss the applicant's appeal based upon his criminal record. The AAO gave the applicant 30 days to respond to the NOID and provide final court dispositions for all charges. In response to the NOID, counsel for the applicant requested a copy of the record of proceedings. The FOIA request was processed and closed on January 19, 2010 for failure to comply.<sup>1</sup>

---

<sup>1</sup> NRC2009023839.

The AAO requested the applicant to submit certified court dispositions relating to his September 27, 2002 arrest for driving under the influence of alcohol and for any other criminal charges that may have been filed against him, for which the record contains no evidence of a final disposition.

The AAO instructed that if a certified court disposition for an offense is unavailable or if the charges had been dropped, he must provide a certified copy of the court's finding that no court records exist for him. The search for court records must be conducted using the applicant's full name and any aliases he may have used as well as his date of birth. The AAO further instructed the applicant that if the court search led to a finding there are no records of charges or convictions, the applicant must request a record of his arrests and convictions from the California Department of Justice.

On February 20, 2009, the AAO received the applicant's response to the Notice of Intent to Dismiss. The applicant furnished an original certified letter from the deputy clerk of the Superior Courts of California, Ventura County that indicated printouts representing four cases maintained on the court's computer system were attached. Only one disposition was provided to AAO, a minute order from the Ventura County Superior Court relating to the applicant's arrest on July 4, 2002. The applicant also submitted a print-out from the California Department of Justice dated February 5, 2009.

As noted above, the record shows the applicant has at least three misdemeanor convictions.

The applicant failed to establish his eligibility for temporary resident status under Section 210 of the Act. He failed to divulge any arrests on his Form I-700 application on which he certified under the penalty of perjury he had no arrests.<sup>2</sup> This is a material misrepresentation.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Although this ground of inadmissibility is waivable, no purpose would be served by adjudicating the applicant's Form I-690 waiver application since his Form I-700 application is not otherwise approvable.

**ORDER:** The appeal is dismissed.

---

<sup>2</sup> He signed the Form I-700 on January 20, 1989.