

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. A3000
Washington, DC 20529



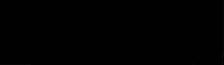
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



LY

FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 11 2006

XDE-88-102-4004

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status denied by the Director, Northern Regional Processing Facility, then remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO), and then denied again by the Director, Nebraska Service Center. The matter is before the AAO on appeal. The appeal will be dismissed.

The facility director initially denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information regarding the applicant's claim of employment for Rafael Gonzalez

The center director finally denied the application because the applicant failed to assist the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), in determining the final disposition of the criminal charges against him.

On appeal from the initial decision, the applicant stated that he had been in the United States working in agriculture since 1985. He stated that he would like to remain here and do something constructive. The applicant attested that he had never had any problems with the police.

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).

"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 the term "felony" of this section. 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 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 of the Act, the crime shall be treated as a misdemeanor 8 C.F.R. § 245a.1(p).

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) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

The Federal Bureau of Investigation report and the Colorado Bureau of Investigation report reveal that the applicant has been charged with the following offenses: November 27, 1989, Assault/Threat, Denver, Colorado police department, [REDACTED] November 27, 1989, Disturb Peace, Denver, Colorado police department, [REDACTED] July 12, 1994, Damage Prop-Private, Denver, Colorado police department, [REDACTED] July 12, 1994, Disturb Peace (misdemeanor), Denver, Colorado police department, [REDACTED] December 30, 1995, Disturb Peace, Denver, Colorado police department, [REDACTED] December 30, 1995, Damage Prop-Private, Denver, Colorado police department, [REDACTED]; and, December 30, 1995, Assault-Threats, Denver, Colorado police department,

On July 1, 2005 and again on October 18, 2005, the applicant was advised of the above arrests and was allowed 90 days in which to submit the court disposition or evidence to overcome the director's finding.

The applicant has the burden to establish, with affirmative evidence that outstanding charges were dismissed or were in error. The record does not contain any response from the applicant regarding the court disposition of the aforementioned arrests.

An alien applying for temporary resident status had 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, 8 U.S.C. § 1160, and is otherwise eligible for temporary resident status under this section. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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