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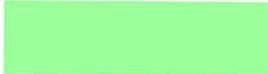
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

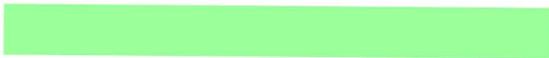


U.S. Citizenship  
and Immigration  
Services



Date: **NOV 12 2013** Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The applicant submitted a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, Group 2 status, under section 210 of the Immigration and Nationality Act, 8 U.S.C. § 1160. The director denied the application, finding the applicant eligible due to his felony conviction. The applicant filed the current appeal.

On appeal, the applicant did not contest the director's findings, rather, the applicant asserted as follows:

I would like my application to be reconsidered . . . I am married and have a U.S. citizen child. My wife is a legal resident . . . I regret the past, and I have proven in the years that that was a mistake in my life, and have paid my dues. (sic) and believe (sic) that I have become aware of my wrong, and hope this will not interfere (sic) with my future. I promise to obey and respect all the laws of this country. Please reconsider my application for Temporary Residence.

On appeal, the applicant submitted an employment verification letter. The applicant also submitted a "No Record" clearance letter dated February 13, 1991, from the records clerk, [REDACTED] California Sheriff's Office, pertaining to a criminal records search. Upon review, the criminal records search indicates it was performed using an incorrect year of birth for the applicant (1961 instead of 1963).

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)(2) 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).

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).

"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, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act; 8 U.S.C. § 1101(a)(48)(A).

In addition, Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), provides in pertinent part for the inadmissibility to the United States of “[a]ny alien who the consular or immigration officer *knows or has reason to believe* is or has been an illicit trafficker in any such controlled substance.” (Emphasis added.)

The record contains court documents that reflect the applicant has been convicted of the following criminal offenses:

- On January 31, 1985, the applicant was arrested and charged with the following violations of the California Penal Code (PC) and the California Health and Safety Code (H&S): section 537E(a)(PC), *buy/sell articles with identification removed*; section 11359(H&S), *possession marijuana/hashish for sale*; section 11352(H&S), *transport/sell narcotic controlled substance*. On April 11, 1985, the applicant was convicted of a violation of section 11351(H&S), *possession or purchase for sale of designated controlled substances*, a felony. The applicant was sentenced to 365 days in jail and 60 months of probation. Disposition of the remaining charges is not known. (Superior Court of the State of California, [REDACTED] case number [REDACTED])
- On April 16, 1992, subsequent to the filing of the instant appeal, the applicant was charged with the following violations of the California Penal Code (PC) and the California Health and Safety Code (H&S): section 11359(H&S), *possession of marijuana for sale*; section 12020(PC), *manufacturing, selling, and/or possessing a certain dangerous weapon of the kind commonly known as a sawed-off shotgun*. On August 28, 1992, the applicant pled guilty and was convicted of a violation of section 11359(H&S), a felony. The applicant was sentenced to 90 days in jail and 36 months of probation. The remaining charge was dismissed in the furtherance of justice. (Superior Court of the State of California, County of [REDACTED] case number [REDACTED])

Because of his two felony convictions, the applicant is ineligible to adjust to temporary resident status. 8 C.F.R. § 210.3(d)(3). There is no waiver available to an applicant convicted of a felony or three or more misdemeanors committed in the United States.

In addition, the applicant is ineligible to adjust to temporary resident status as he has two convictions for trafficking in a controlled substance. Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C). In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer “knows or has reason to believe” that the applicant is or has been an illicit trafficker in a controlled substance. *See* Section 212(a)(2)(C) of the Act; *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000). In order for an immigration officer to have sufficient “reason to believe” that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by “reasonable, substantial, and probative evidence.” *Id.* (citing *Hamid v. INS*, 538 F.2d 1389, 1390-91 (9<sup>th</sup> Cir.1976)). Because the applicant’s two convictions for drug trafficking constitute ample reason for an immigration officer to believe that the applicant knowingly engaged in drug trafficking, the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act. There

is no waiver available to an applicant convicted of trafficking in a controlled substance. Section 210(c)(2)(B)(ii)(III) of the Act. An alien who is inadmissible under the provisions of 212(a) of the Act whose grounds of inadmissibility may not be waived pursuant to section 210(c)(2)(B)(ii) of the Act is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(2). For this additional reason, the application may not be approved.

The record further contains documentation indicating that on or about October 1, 1985, while incarcerated for his 1985 conviction, deportation proceedings were instituted against the applicant as an alien present in the United States without having been admitted, pursuant to the Immigration and Nationality Act (Act), as amended, section 212(a)(6)(A)(i) [previously numbered section 241(a)(2) of the Act]. On October 4, 1985, an Immigration Judge ordered the applicant to be deported, and on that date the applicant was deported on foot to Mexico.

An applicant for adjustment to temporary resident status as a special agricultural worker has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of days, 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 adjustment of status. 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.