



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



Date: **JUN 30 2015**

FILE #: [REDACTED]  
APPLICATION RECEIPT #: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. This is a final decision. You do not have the right to file a motion to reopen or reconsider.

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The director denied the application because the applicant had been convicted of a felony.

The Attorney General [now Secretary, Department of Homeland Security] may deny adjustment to permanent residence and terminate the temporary residence status of a special agricultural worker if the applicant is convicted of a felony or three or more misdemeanors in the United States. Section 210(a)(3)(B)(ii)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1160(a)(3)(B)(ii)(II). 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 record reflects that on [REDACTED] 1986, the applicant was arrested by the [REDACTED] Sheriff's Department, [REDACTED] California, for a violation of Cal. Health & Safety Code § 11352, Transportation/sale designated controlled substance, a felony. On [REDACTED] 1986, the applicant was convicted of the offense and sentenced to four years in prison.

The director denied the application for temporary resident status because the applicant was convicted of a felony and was thus ineligible for adjustment to permanent resident status under section 210(a)(3)(B)(ii)(II) of the Act, 8 U.S.C. § 1160(a)(3)(B)(ii).

On appeal, the applicant states that he was not guilty of the crime as he only gave a ride to a co-worker who, unbeknownst to him, was a drug dealer.

The record, however, establishes that the applicant was convicted of a felony. "Felony" means a crime committed in the United States, punishable by imprisonment for more than one year, regardless of the term actually served, if any. 8 C.F.R. § 245a.1(p). In addition,

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).

The record reflects that the court sentenced the applicant to four years in prison. Because of his felony conviction, the applicant is ineligible to adjust to temporary resident status under 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.

Beyond the decision of the director, the applicant is not eligible for adjustment of status to temporary residence as he has been convicted of trafficking in a controlled substance. Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C). There is no waiver available to an applicant convicted of trafficking in a controlled substance. For this additional reason, the application may not be approved.

An applicant for adjustment of status 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.