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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 19 2005

IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Western Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant had been convicted of four misdemeanors, rendering him ineligible for temporary residence.

On appeal the applicant points out that his convictions occurred prior to the passage of the Immigration and Reform Act of 1986, and asserts that the convictions cannot be held against him.

The status of an alien lawfully admitted for temporary residence under section 245A of the Act may be terminated if he is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. 245a.2(u)(1)(iii). It may also be terminated if the alien commits an act that makes him inadmissible to the United States as an immigrant. *See* Section 245A(b)(2)(B) of the Act.

The applicant was convicted in California of the misdemeanor offense of Unlawfully Drive a Vehicle Upon a Highway While Under the Influence of Intoxicating Liquor on August 26, 1977, March 9, 1979, August 22, 1980 and December 29, 1980.

The court of appeals in *Naranjo-Aguilera v. INS*, 30 F.3d 1106 (9th Cir. 1994) ruled that the district court had no jurisdiction to rule on the "one felony, three misdemeanor" regulation and its implementation by the Immigration and Naturalization Service. It left intact the Service's determination that conviction(s) of a felony or three or more misdemeanors committed in the United States support a denial of an application for temporary residence as well as a termination of temporary residence, *regardless of when the convictions occurred*. Further, it is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992).

Thus, the applicant is ineligible for temporary residence because of his four misdemeanor convictions in the United States.

An alien applying for adjustment of status has 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 245a of the Act, 8 U.S.C. 1255a, *and is otherwise eligible for adjustment of status under this section*. 8 C.F.R. 245a.2(d)(5). The applicant has failed to meet this burden.

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