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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]  
XSO 89 044 2030

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 27 2008**

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:



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:** The applicant's temporary resident status was terminated by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant had been convicted of a felony.

On appeal, the applicant requested a copy of his file through the Freedom of Information Act. The Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), complied with the request on May 19, 2004. The applicant states that he is attending a program to keep him away from alcohol and drugs and asks for another chance.

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).

"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).

"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 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).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act.

The record reveals the following State of California criminal record:

- On April 19, 1988, the applicant was arrested and charged with violation of 20002(A) of the California VC, Hit and Run: Property Damage, case [REDACTED]. He was convicted of this misdemeanor and sentenced to 7 days in jail.
- On July 20, 1989, the applicant was arrested and charged with violation of 11350(A) of the California HSC, Possess Narc Control Substance, case [REDACTED]. He was convicted of this felony and sentenced to 90 days in jail.
- On October 6, 1991, a warrant [REDACTED] was issued for the applicant for violation of 11350(A) of the HSC Possess Narc Control Substance, case [REDACTED]. The disposition is unknown.
- On May 16, 1992, the applicant was arrested and charged with violation of 32 of the California PC, Accessory [REDACTED]. The charge was dismissed on July 13, 1992.

- The record also shows that the applicant was charged with violation of 11480 of the California PC, Wi-Misuse/Etc Child Support Aid. The charge was dismissed on July 13, 1992.

The applicant is ineligible for temporary resident status because of his felony conviction. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. Furthermore, there is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(II) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. See section 210(c)(2)(B)(ii) of the Act. There is no evidence that the applicant was charged with the possession of thirty grams or less of marijuana.

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 210(c) of the Act, 8 U.S.C. 1160, and is otherwise eligible for adjustment of 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.