



U.S. Citizenship
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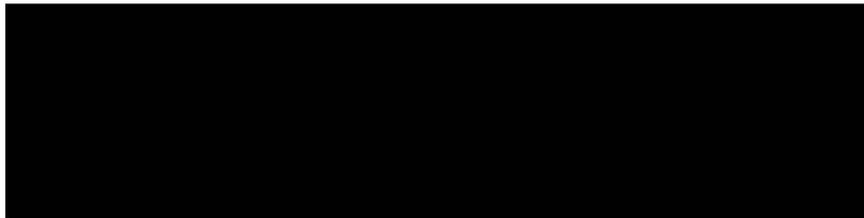
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FILE: 
XSI-87-012-2072

Office: California Service Center

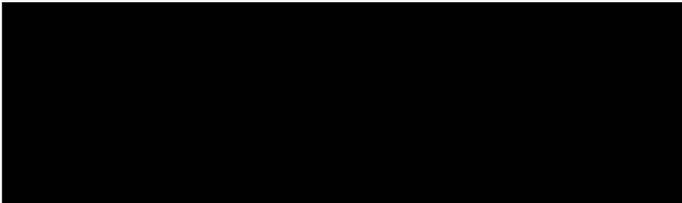
Date: FEB 23 2007

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:



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.

Robert P. Wiemann, Chief
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 based the termination on the applicant's criminal record. On appeal, counsel points out the applicant's convictions predate the date that the Immigration and Naturalization Service propounded its standard for termination. Counsel, therefore, asserts the termination amounts to an application of an unconstitutional *ex post facto* law. In addition, counsel contends the director did not accomplish the termination action within the time permitted. Counsel does not challenge the fact of the convictions.

The status of an alien lawfully admitted for temporary residence under section 210(a)(2) 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. § 210.4(d)(2)(iii). His status may also be terminated if he commits an act which renders him inadmissible as an immigrant. 8 C.F.R. § 210.4(d)(2)(ii).

According to 8 C.F.R. 210.5, an alien who has been granted temporary resident status before November 30, 1988 under section 210(a)(1) of the Act, and has maintained that status satisfactorily, shall be adjusted to lawful permanent resident status as of December 1, 1990. 8 C.F.R. 210.4(d)(3)(ii) states that termination proceedings must be *commenced* before the alien becomes eligible for the adjustment to lawful permanent resident status.

In this case, the applicant was granted temporary resident status on April 19, 1988. He was sent a letter dated November 23, 1990 which discussed the director's intent to terminate his temporary resident status. Therefore, the director properly commenced termination proceedings before the applicant became eligible for permanent residence.

"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 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 applicant was convicted of the misdemeanor offense of *Unlicensed Driver*, section 12500(a) of the California Vehicle Code (CVC), on December 22, 1980, October 5, 1981, August 21, 1981, July 1, 1982 and June 7, 1985. He was also convicted of the misdemeanor offense of *Driving Under the Influence*, section 23152(a) of the CVC, on November 12, 1982 and September 3, 1983.

On July 14, 1989, charges of *Willful Child Cruelty: Possible Injury or Death* were dismissed. However, the applicant was convicted on that date of the misdemeanor offense of *Inflicting Corporal Injury on Spouse/Cohabitant*, section 273.5 of the California Penal Code (CPC). He was also convicted of the misdemeanor offense of *Violation of Court Order to Prevent Domestic Violence*, section 273.6(A) of the CPC, on May 30, 1996.

The applicant was arrested for *Possession of Narcotic Controlled Substance*, section 11350(A) of the California Health and Safety Code, on July 6, 1998, in Salinas, California. He was also arrested there for *Battery on Person*, on March 11, 1981, and *Failure to Pay Fine and Carry Concealed Weapon (Firearm)* on December 23, 1982. However, the dispositions of these offenses are unknown. Thus, the applicant was convicted of at least the nine misdemeanors shown above.

Counsel bases his appeal on the premise that charges or convictions committed prior to December 18, 1989 should not be retroactively considered, as that was the effective date of the law amendment applying the "one felony/three misdemeanor" rule. He notes that all of the charges were lodged against the applicant prior to that date.

The court of appeals in *Naranjo-Aguilera v. INS*, 30 F.3d 1106 (9th Cir. 1994) ruled that the district court that had taken that position 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 a special agricultural worker 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).

Congress did not place any time restraints on the applicability of this section of law. There has been no judicial finding that the law is unconstitutional. The applicant's misdemeanor convictions render him ineligible for temporary resident status.

ORDER: The appeal is dismissed.