

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



23

FILE:



Office: NEBRASKA SERVICE CENTER

Date: NOV 13

XRV 88 083 01012

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:



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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, terminated the applicant's temporary resident status. The Director withdrew his previous decision, reopened the proceedings, and subsequently terminated the applicant's temporary resident status again. The matter is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii).

"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).

On July 8, 2000, the director initially terminated the applicant's temporary resident status because it was determined that the applicant had been convicted a felony in the United States, and was found inadmissible under section 212(a)(23) of the Immigration and Nationality Act (the Act), now 212(a)(2)(A)(i)(II) of the Act.

On appeal, the applicant claimed that he had never been convicted of the offense mentioned in the director's decision and provided evidence to refute this matter.

On August 2, 2005, the director withdrew his previous decision and reopened the proceedings for review. The director determined that the felony conviction did not pertain to the applicant.

On May 2, 2006, the director terminated the applicant's temporary resident status because the applicant had been convicted of at least seven misdemeanors in the United States.

On appeal, the applicant submits a Certificate of Lack of Record from [REDACTED], deputy clerk of the Yakima County District Court in Washington, who indicated that no record was found for [REDACTED] Torres DOB: 01-07-1957."

The record contains several court dispositions which revealed the following:

1. On September 17, 1982, the applicant was arrested under the alias [REDACTED] by the United States Border Patrol in El Centro, California for illegal entry, a violation of title 8, U.S.C. section 1325, and re-entry into the United States after deportation, a violation of title 8, U.S.C. section 1326. On or about September 21, 1982, the applicant was convicted of illegal entry, a misdemeanor, and sentenced to confinement for 30 days. The remaining offense was dismissed. Case no. [REDACTED]
2. On June 29, 1990, the applicant was arrested by the Forest Grove Police Department in Oregon for driving under the influence intoxicated, a violation of ORS 813.010. On November 16, 1990, the

applicant was convicted of this misdemeanor offense. The applicant was ordered to pay a fine, attend an alcohol program, complete 80 hours of community service and his driver license was suspended for one year. Subsequently, the applicant violated the terms of his probation and on September 4, 1992, the applicant was sentenced to 30 days in jail. Docket no. [REDACTED]

3. On April 30, 1992, the applicant was arrested by the Forest Grove Police Department for driving while license is suspended or revoked, a violation of ORS 811.1824. On June 9, 1992, the applicant was convicted of this misdemeanor offense. Case no. [REDACTED]
4. On July 31, 1992; the applicant was arrested by the Forest Grove Police Department and subsequently charged with driving while license is suspended or revoked, a violation of ORS 811.1824. On November 10, 1992, the charge was dismissed. Docket no. [REDACTED]
5. On July 31, 1992, the applicant was arrested by the Forest Grove Police Department for driving under the influence intoxicated, a violation of ORS 813.010. On September 21, 1992, the applicant was convicted of this misdemeanor offense. The applicant was sentenced to serve 45 days in jail to serve concurrent with case no. [REDACTED] Case no. [REDACTED]
6. On August 17, 1992, the applicant was arrested under the alias [REDACTED] by the Cornelius Police Department for driving under the influence intoxicated, a violation of ORS 813.010. On September 21, 1992, the applicant was convicted of this misdemeanor offense. The applicant was sentenced to serve 45 days in jail to serve concurrent with case no. [REDACTED] Case no. [REDACTED]
7. On February 5, 1994, the applicant was arrested by the McMinnville State Police for a felony count of driving while license is suspended or revoked, a violation of ORS 811.1823. On February 8, 1994, the applicant was charged with this offense. On March 16, 1994, the case was closed. Case no. [REDACTED]
8. On March 18, 1994, the applicant was arrested and subsequently charged with driving while license is suspended or revoked, a violation of ORS 811.1824. On April 11, 1994, the applicant was convicted of this misdemeanor offense. The applicant was placed on probation for three years and ordered to pay a fine. Case no. [REDACTED]
9. On July 18, 1994, the applicant was arrested by the Forest Grove Police Department for false information to a police officer, a violation of ORS 807.620; misuse of an identification card, a violation of ORS 807.430; 1<sup>st</sup> degree forgery, a violation of ORS 165.013; and failure to appear for a traffic offense of driving under the influence, a violation of ORS 810.360. No complaints were filed for ORS 807.620, ORS 807.430, ORS 165.013 and ORS 810.360. On July 19, 2004, the applicant was charged with violating ORS 165.007, 2<sup>nd</sup> degree forgery; ORS 165.017, criminal possession of a forged instrument; ORS 807.620 false information to a police officer; and ORS 807.580, use invalid operators license. On July 26, 1994, the applicant was convicted of a misdemeanor offense of 2<sup>nd</sup> degree forgery and false information to a police officer and placed on probation for one year. The remaining charges were dismissed. Docket no. [REDACTED]

A FBI report dated October 22, 1996 revealed additional offenses in the states of California and Oregon:

10. On August 27, 1983, the applicant was arrested under the alias [REDACTED] by the Sheriff's Office in San Bernardino, California for resist/obstruct a public officer, a violation of section 148 PC.
11. On October 22, 1989, the applicant was arrested by the Sheriff's Office in Stockton, California for theft of personal property, a violation of section 484(a) PC.
12. On August 25, 1990, the applicant was arrested by the State Police in Roseburg, Oregon for driving under the influence, a violation of ORS 813.010.
13. On October 2, 1990, the applicant was arrested under the alias [REDACTED] by Sheriff's Office in Hillsboro, Oregon for failure to appear in the 1<sup>st</sup> degree, a violation of ORS 162.205; however, no complaint was filed.
14. On July 27, 1994, the applicant was arrested by the Sheriff's Office in Hillsboro and subsequently charged with a felony offense of criminal driving while license is suspended or revoked, a violation of ORS 811.182. On August 25, 1994, the felony charge was terminated in the Hillsboro District Court. Docket no. [REDACTED]. On September 16, 1994, the felony charge was reduced to a lesser offense and the applicant was convicted in the Hillsboro Circuit Court of criminal driving while license is suspended or revoked, a misdemeanor. Docket no. [REDACTED]
15. On February 27, 1995, the applicant was arrested by the Hillsboro Police Department for contempt of court for violating a restraining order, a violation of section ORS 033.045.
16. On March 8, 1995, the applicant was arrested by the Sheriff's Office in Hillsboro and subsequently charged with two counts of felony criminal driving while license is suspended or revoked, a violation of ORS 811.182. On April 6, 1985, both felony counts were terminated in the Hillsboro District Court. Docket no. [REDACTED]. On August 31, 1995, the applicant was convicted in the Hillsboro Circuit Court of one felony count of criminal driving while license is suspended or revoked, a violation of ORS 811.182. The applicant was ordered to pay a fine and placed on probation for 18 months. The remaining felony count was dismissed. Docket no. [REDACTED]
17. On July 13, 1995, the applicant was arrested by the Hillsboro Police Department for three counts of contempt of court for violating a restraining order, a violation of ORS 033.045.
18. On January 30, 1996, the applicant was arrested by the Forest Grove Police Department for two counts of contempt of court for violating a restraining order, a violation of ORS 033.045.

On August 2, 2005 and December 9, 2005, the director issued a Notice of Intent to Terminate, advising the applicant that his temporary resident status would be terminated based on certified court records made available to Citizenship and Immigration Services (CIS) that revealed he had been convicted of seven misdemeanors (numbers one, two, three, five, eight and nine above). The director also informed the applicant of his arrests in numbers 12 and 14 through 18 above. The director also mentioned the applicant's arrests on August 17, 1992 and February 5, 1994; however, these arrests relate to the court dispositions in numbers six and seven above, respectively. The applicant was provided the opportunity to submit certified court documents for the arrests as well as evidence establishing that the seven misdemeanor convictions did not relate to him. The applicant, however, failed to respond to either notice. On May 2, 2006, the director terminated the applicant's temporary resident status.

For number nine above, the director, in his decision, concluded that the applicant had been convicted of two counts of forgery. The court disposition, however, indicates that the applicant was convicted of *one* count of 2<sup>nd</sup> degree forgery and false information to a police officer.

The court document from Yakima County District Court in Washington, submitted on appeal, is irrelevant in this matter as the applicant's arrests mentioned in the FBI report occurred in California and Oregon. The applicant has not provided the court dispositions requested by the director in his Notice of Intent to Terminate. Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by CIS. The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for temporary resident status because of his seven misdemeanor convictions. 8 C.F.R. § 245a.2(u)(1)(iii). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. The applicant is also ineligible because he failed to provide court dispositions for numbers 10 through 12 and 14 through 18 above necessary for the adjudication of the application.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status. 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.