

U.S. Department of Homeland Security

Citizenship and Immigration Services

44

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS, 3/F  
425 I STREET, N.W.  
Washington, D.C. 20536



FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE:  
DEC 16 2003

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: Self-represented

Identifying info deleted to  
prevent unauthorized  
invasion of personal privacy

INSTRUCTIONS:

Attached is the decision rendered on your appeal. 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, the Service Center will contact you. 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, Director  
Administrative Appeals Office

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

The director terminated the applicant's temporary resident status because of the applicant's criminal record.

On appeal, the applicant stated that prior to applying for permanent resident status he committed felonies.

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).

The record reveals the following offenses in California:

- 1) On June 9, 1971, the applicant was convicted of illegal entry into the United States, a misdemeanor.
- 2) On August 21, 1973, the applicant was convicted of illegal entry into the United States, a misdemeanor.
- 3) On July 2, 1974, the applicant was convicted of inducing illegal entry into the United States, a misdemeanor.

The record also reveals the following misdemeanor offenses in California for which no final disposition is cited:

- 1) On October 28, 1970, the applicant was arrested for drunk driving.
- 2) On February 15, 1971, the applicant was arrested for drunk driving.

In a Notice of Intent to Terminate issued on November 28, 1990, the director noted the offenses listed above and requested that the applicant submit court dispositions for his offenses. The director also requested that the applicant submit his Form DL-414 driving record. The applicant failed to respond to the notice. The director concluded the applicant had failed to comply with his request and terminated the applicant's temporary resident status.

On appeal, the applicant admitted that he had committed felonies prior to filing for permanent resident status. According to the applicant, those convictions were dismissed. However, there is nothing in the record to indicate that the applicant had any felony convictions. Moreover, the applicant does not specify what he was convicted of or how many times he was convicted. The applicant presents a letter dated October 1, 1993 from the State of California Bureau of Criminal Identification and a copy of his driving record. In the letter it is stated that a search of the applicant's fingerprints failed to reveal the existence of any California criminal history record. Also, the printout indicated that the applicant had no legal record.

When the applicant applied for temporary residence (legalization) he had his fingerprints taken on February 3, 1989. That fingerprint card was forwarded to the Federal Bureau of Investigation (F.B.I.) and the subsequent response from the F.B.I. showed the three misdemeanor convictions from 1971-1974 and the two arrests from 1970-71 listed above. It is not known why the California report and motor vehicles printout did not show the convictions or arrests. It is possible the California report and the printout only show arrests/convictions within the past 10 years. The applicant has the burden to establish, with **affirmative evidence**, that outstanding charges were dismissed or were in error. The applicant's contention that his convictions were dismissed is not affirmative evidence and fails to meet the applicant's burden. The applicant has not submitted any convincing evidence to demonstrate that he was not convicted and/or arrested as shown, or that the arrests did not also culminate in convictions.

The applicant acknowledges committing crimes prior to filing an application for temporary resident status but claims his convictions were dismissed. Nonetheless, there is nothing in the record to indicate that the convictions were, in fact, dismissed. Moreover, under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Immigration and Nationality Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan, Int.*

Dec. #3377 (BIA 1999); *Murillo-Espinoza v. INS*, 261 F. 3d 771 (9th Cir. 2001).

According to the F.B.I. printout, the applicant was convicted for three misdemeanors in the 1971-74 period. The applicant has failed to demonstrate that he was not convicted of three or more misdemeanors.

The applicant must agree to fully cooperate in the verification process. Failure to assist Citizenship and Immigration Services (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 three misdemeanor convictions. 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 or more misdemeanors committed 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 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.