



U.S. Citizenship  
and Immigration  
Services



L4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

DEC 29 2004

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

**PUBLIC COPY**

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.

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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 arrested for at least six misdemeanors, and had not provided the dispositions.

On appeal, the applicant provides expungements relating to three misdemeanor convictions.

The status of an alien lawfully admitted for temporary residence under section 210(a)(2) of the Act may be terminated if he or she is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.4(d)(2)(iii).

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. Termination proceedings must be commenced before the alien becomes eligible for the adjustment to lawful permanent resident status. 8 C.F.R. § 210.4(d)(3)(ii)

In this case, the applicant was notified by a letter dated November 30, 1990 of the director's intent to terminate his temporary resident status. The applicant was allowed 30 days in which to submit sufficient evidence to overcome the apparent ground of ineligibility. After the applicant failed to overcome the reason given for the proposed termination, the director terminated the applicant's temporary resident status. By notifying the applicant on November 30, 1990 of his intent to terminate, the director met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

On appeal, the applicant provides court orders, under section 1203.4 of the California Penal Code, setting aside and dismissing his convictions for Driving While License Suspended, Driving Under the Influence and a February 13, 1981 conviction supposedly under section 23102 of the California Vehicle Code. That section does not exist. According to the F.B.I. Identification Division report in the record, the applicant was arrested for Driving Under the Influence on February 11, 1981, and it may be that offense, section 23152 of the Code, that the applicant was convicted of. That is, the court order may incorrectly state section 23102 when it should state section 23152. If the applicant was convicted of Driving Under the Influence at that time, that would constitute a third misdemeanor conviction.

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the 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. Any subsequent action which overturns a conviction, other than on the merits of the case, is ineffective to expunge a conviction for immigration purposes. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Thus, the applicant remains convicted of at least the two certain misdemeanor offenses shown above. The director pointed out that the applicant was arrested at other times for other offenses, such as False Identity to Peace Officer, on September 24, 1985, January 12, 1986 and October 18, 1987, and Hit and

Run/Property Damage on November 12, 1984. The applicant has not provided the dispositions for these offenses.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by the Service. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with such requirements specified in this part."

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). By not providing the dispositions, the applicant has failed to meet the burden of establishing that he was not convicted of at least three misdemeanors in the United States.

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