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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE:



Office: CALIFORNIA SERVICE CENTER

MAR 25 2004
Date:

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

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, 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 (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant had been convicted at least three times and failed to submit requested court documents regarding his criminal record. The director therefore determined that the applicant had failed to prove that he had not been convicted of a felony or three or more misdemeanors that would render him ineligible under 8 C.F.R. § 210.3(d), and terminated his temporary resident status pursuant to 8 C.F.R. § 210.4(d)(2)(iii).

On appeal, the applicant requested a copy of the record of proceedings.

The record shows that the applicant had previously submitted a request for a copy of the record of proceedings with his response to the notice of intent to terminate issued on November 30, 1990. The record reflects that the Service (now Citizenship and Immigration Services, or CIS) complied with the request and mailed a copy of the record to the applicant on March 21, 1991. A review of the record reveals that no relevant documentation was entered into the record by either CIS or the applicant in the interim period between March 21, 1991, and the issuing of the notice of termination on April 22, 1992. Therefore, the director determined that there was no reason to provide the applicant with another essentially identical copy of the record subsequent to the filing of his appeal. For this reason, the record must be considered complete.

The status of an alien lawfully admitted for temporary residence under section 210(a)(2) of the Immigration and Nationality Act (INA) 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).

"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).

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 INA, 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 September 8, 1988. He was notified by a letter dated November 30, 1990, of the director's intent to terminate his temporary resident status if he failed to submit requested documentation relating to his arrest record and the disposition of criminal charges brought against him. The applicant was allowed 30 days in which to comply. After the director determined that the applicant failed to provide sufficient documentation, the director, on April 22, 1992, terminated the applicant's temporary resident status. By notifying the applicant on November 30, 1990 of the director's intent to terminate, CIS met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

The record reveals the following regarding the applicant's criminal history in the State of California:

- An arrest by the Los Angeles Police Department, and subsequent conviction for shoplifting on December 20, 1974;
- An arrest by the Fresno Sheriff's Office, and subsequent conviction for misdemeanor driving while intoxicated on a highway on June 12, 1977;
- An arrest by the King City Police Department, and subsequent conviction for a violation of section 23101(a) of the California Vehicle Code, driving under the influence involving injury on December 28, 1978; and,
- An arrest by the [REDACTED] Police Department for carrying a concealed weapon as well as public intoxication on May 25, 1980. The disposition of these charges is not known.

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."

While the applicant has attempted to provide court documents relating to his criminal record, the only dispositive document confirms that he was convicted for a violation of section 23101(a) of the California Vehicle Code by the Justice Court of the Southern Judicial District, Monterey County, California on December 28, 1978. The other court documents provided by the applicant provide no information regarding the disposition of the remaining criminal charges and convictions. Nevertheless, the F.B.I. report clearly shows 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 misdemeanors committed in the United States. *See* section 210(c)(2)(B)(ii) of the INA.

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 INA, 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.