



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: OCT 27 2004

IN RE: Applicant: [Redacted]

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

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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, Director
Administrative Appeals Office

identifying data deleted to
prevent unwarranted
invasion of personal privacy

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DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of five misdemeanors, and was therefore ineligible for temporary residence.

On appeal, the applicant claims the director inappropriately relied upon alleged convictions to deny his application.

An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3).

In his decision the director pointed out the applicant was convicted of Illegal Entry, 8 U.S.C. § 1325, on November 15, 1978, August 21, 1983 and June 28, 1985. He also pointed out the applicant was convicted of Violating Immigration Laws After Deportation (Reentry After Deportation), 8 U.S.C. § 1326, on November 15, 1978 and August 21, 1983.

On appeal the applicant states that only convictions, not arrests, lead to ineligibility. He implies that he was only arrested, but does not specify which of the offenses referred to by the director did not lead to convictions. It is noted that the report of the Federal Bureau of Investigations Identification Division clearly sets forth the applicant's convictions.

The applicant also indicates that he 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 him 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. The applicant's misdemeanor convictions render him ineligible for temporary resident status. It is noted that this finding regarding felony and misdemeanor convictions in the special agricultural worker program is consistent with the finding in the general legalization (amnesty) program concerning felony and misdemeanor convictions.

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.