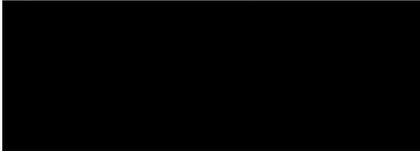




U.S. Citizenship  
and Immigration  
Services

L4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 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

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

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prevent disclosure of unwarranted  
invasion of personal privacy

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**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 sustained.

The director based the termination on the applicant's criminal history. On appeal, the applicant provided the requested court dispositions.

The applicant appears to be represented; however, the organization is not authorized to represent the applicant, as it is not a religious, charitable, social service or similar organization recognized by the Board of Immigration Appeals. See 8 C.F.R. 292.1(a)(4). Therefore, this decision will be sent to the applicant only.

The status of an alien lawfully admitted for temporary residence under section 210(a)(2) of the Act 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 Act, 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 adjustment to lawful permanent resident status.

In this case, the applicant was granted temporary resident status on February 16, 1988. He was notified by a letter dated November 29, 1990 of the director's intent to terminate his temporary resident status. The applicant was allowed 30 days in which to respond. After the applicant failed to provide the requested criminal dispositions, the director terminated the applicant's temporary resident status. By notifying the applicant on November 29, 1990 of his intent to terminate, the director met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

The record reveals the applicant was charged on April 14, 1985 in Orange County, California with Carrying a Concealed Weapon in a Vehicle, Carrying a Loaded Firearm in Public, and Having an Open Container in a Vehicle. The first two offenses are misdemeanors, and the last an infraction. He pled guilty to the first charge, and the other two were dismissed.

On April 26, 1985, the applicant was charged with Receiving Stolen Property in Madera County, California. A statement from the Madera Justice Court indicates that there are no records pertaining to the applicant for 1985. Thus, the applicant is known to have only the one misdemeanor conviction referred to above.

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). On appeal, the applicant has met this burden by providing documents which indicate that his criminal record is not significant enough to provide for termination of status.

**ORDER:** The appeal is sustained.