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U.S. Citizenship  
and Immigration  
Services



24

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



JAN 27 2005

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The director denied the application because the applicant failed to establish that he had not been convicted of the offenses for which he had been arrested.

On appeal, the applicant provides a record of his three misdemeanor convictions of May 3, 1988. He asserts that these convictions should not be considered in the adjudication of his appeal, as they occurred prior to December 19, 1989, the effective date of the "three misdemeanor" ineligibility rule. He also maintains that the three misdemeanor rule only applies to termination of temporary residence, and not to decisions on applications for temporary residence.

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).

The record reveals the applicant was convicted on May 3, 1988 of the three misdemeanor offenses of Assault, Disorderly Conduct, and Battery. He does not dispute the fact of the convictions, but points out that the law itself, at section 210(a)(3)(B) of the Act, states the Attorney General may deny adjustment to permanent status and provide for termination of temporary resident status if the alien *is* convicted of a felony or three or more misdemeanors committed in the United States. (emphasis added) The applicant maintains that the use of the word "is" means the law was intended to apply only to misdemeanor and felony convictions which take place after an alien becomes a temporary resident, and after December 19, 1989, the date the law section became effective. He also stresses that the law section allows only for denials of permanent residence and termination of temporary residence, and does not provide for denials of temporary residence. He cites the *Naranjo* district court case as supportive of his position.

The court of appeals in *Naranjo-Aguilera v. INS*, 30 F.3d 1106 (9<sup>th</sup> Cir. 1994) ruled that the district court 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.