

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Handwritten mark resembling the number '4' with a checkmark-like stroke.

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 27 2005

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:

[Redacted]

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, 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: This matter is an application for temporary resident status denied by the Director, Western Service Center, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO), reopened and denied again by the Director, California Service Center. The matter is before the AAO on appeal. The appeal will be dismissed.

The director initially denied the application because of the applicant's criminal record. The director finally denied the application because the applicant failed to assist the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) in determining the final disposition of the criminal charges against him.

On appeal from the initial decision, the applicant stated that he sent the copies of the final disposition as requested. The applicant stated that he would try to acquire copies of the disposition and submit them. The applicant did not respond to the more recent decision of denial.

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).

"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 the term "felony" as defined at 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).

"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 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The FBI report reveals that on May 25, 1987, the applicant was arrested and charged with possession of narcotics, controlled substance, a felony offense. The report also shows a second charge for possession of narcotics, controlled substance, a felony offense on June 9, 1987. The final outcome of these charges is unknown, as the requested court disposition was not made available to Citizenship and Immigration Services. The FBI report also shows that the applicant was convicted of two misdemeanors.

On January 24, 1991 and again on January 28, 1999, the applicant was advised of the above arrests and was allowed 30 days in which to submit the court disposition or evidence to overcome the director's finding.

The record does not contain any responses from the applicant.

The applicant has the burden to establish, with **affirmative evidence** that the outstanding charges were dismissed or were in error. The applicant claimed on appeal to having submitted the court disposition, however, the record does not contain any court disposition. A statement made by the applicant is not affirmative evidence and fails to meet his burden.

An alien applying for temporary resident status had 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 temporary resident 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.