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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 04 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:

[redacted]

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 termination of temporary resident status by the Director, Western Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant had been convicted of at least three misdemeanors.

On appeal, counsel points out some of the convictions were expunged, leaving the applicant with only two actual convictions.

The status of an alien lawfully admitted for temporary residence under section 210(a)(2) of the Act may be terminated if he or she is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.4(d)(2)(iii).

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. Termination proceedings must be commenced before the alien becomes eligible for the adjustment to lawful permanent resident status. 8 C.F.R. § 210.4(d)(3)(ii)

In this case, the applicant was granted temporary resident status on July 19, 1988. He was notified by a letter dated November 19, 1990 of the director's intent to terminate his temporary resident status because of his misdemeanor convictions. The applicant was allowed 30 days in which to submit sufficient evidence to overcome the ground of ineligibility. After the applicant failed to overcome his ineligibility, the director terminated the applicant's temporary resident status. By notifying the applicant on November 19, 1990 of his intent to terminate, the director met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

Counsel concedes the applicant was convicted of Driving Under the Influence and Carrying a Concealed Weapon on March 14, 1984, and of Carrying a Concealed Loaded Weapon on December 9, 1985. These are the convictions referred to by the director in his decision. Counsel provides an order from the court setting aside and dismissing the last conviction under section 1203.4 of the California Penal Code.

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. Any subsequent action which overturns a conviction, other than on the merits of the case, is ineffective to expunge a conviction for immigration purposes. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Thus, the applicant remains convicted of the three misdemeanor offenses shown above. Counsel also provided dispositions of two other charges in 1987. However, these need not be addressed as the

applicant is ineligible for temporary residence due to the three misdemeanor convictions already discussed.

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.