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

U.S. Citizenship and Immigration Services

[redacted]

JUL 21 2004

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

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

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 based the termination on the applicant's criminal history.

On appeal, the applicant states that he was accused of being another person, and was cleared of the felony charge.

The applicant appears to be represented, however, no Form G-28, Notice of Entry of Appearance as Attorney or Representative has been submitted. Therefore, this decision will be furnished 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 before he becomes eligible for adjustment to permanent residence if he is convicted of any felony or three or more misdemeanors in the United States. *See* 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. As stated in 8 C.F.R. § 210.4(d)(3)(ii), termination proceedings must commence before the alien becomes eligible for the adjustment to lawful permanent resident status.

The applicant was notified by a letter dated November 14, 1990 of the director's intent to terminate his temporary resident status. Thus, the termination proceedings commenced within the required period.

In the Notice of Termination, the director set forth the applicant's three misdemeanor convictions. He was convicted of Driving Under the Influence on October 24, 1985 and January 17, 1985. He was also convicted of False Identification to a Police Officer on January 17, 1985. These offenses all occurred in Madera County, California. Although the director listed two of the arrest dates in the Notice of Termination, rather than the conviction dates, he nevertheless correctly concluded that the applicant had three misdemeanor convictions.

While the applicant indicates on appeal that he was cleared of a felony charge, the director did not cite any such charge against the applicant. The applicant has not contested the fact that he was convicted of three misdemeanors.

An alien 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. *See* 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.