U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

SEP 13 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

identifying data deleted to prevent clearly 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 dismissed.

The director terminated the applicant's status upon concluding that the applicant had made a fraudulent claim to have worked for in qualifying agricultural employment during the required period.

On appeal, the applicant asserted that he did work for Mr under different conditions than those originally claimed.

Since the director's decision, the applicant was arrested and convicted of numerous offenses, and was removed from the United States.

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).

The record reveals the applicant was convicted of the felony offense of Possession of a Firearm With Prior Conviction, section 12021(C)(1) of the California Penal Code, on April 30, 1999, and was sentenced to sixteen months imprisonment. He is ineligible for temporary residence on that basis alone. He was also charged with many other offenses, such as Assault With a Firearm (twice), Assault With a Semiautomatic Firearm (twice), and Unlawful Firearm Activity, although not all dispositions are in the record. On January 5, 2000, he was removed from the United States by the Immigration and Naturalization Service.

In conclusion, the applicant has been convicted of felony, and is therefore ineligible for temporary residence. There is no waiver of such ineligibility.

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.