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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 15 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

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 because the applicant had been convicted of a felony.

On appeal, counsel points out the conviction occurred in 1969. He maintains a felony conviction is only disqualifying if it occurred subsequent to the applicant's acquisition of temporary resident status.

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

In this case, the applicant was granted temporary resident status on February 10, 1988. He was notified by a letter dated November 14, 1990 of the director's intent to terminate his temporary resident status because of his felony conviction. 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 14, 1990 of his intent to terminate, the director met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

The record reveals the applicant was convicted of the felony offense of 18 U.S.C. § 1546, Unlawful Possession of Immigration Document, on April 30, 1969. Counsel concedes that fact, but points out that the pertinent regulation as stated above allows for the termination of status if the applicant *is* convicted of a felony. He also 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 the temporary resident status if the alien *is* convicted of a felony or three or more misdemeanors committed in the United States. (emphasis added) Counsel 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.

The court of appeals in *Naranjo-Aguilera v. INS*, 30 F.3d 1106 (9th 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 felony conviction renders him ineligible to maintain 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.