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

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 25 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: Self-represented

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, the service center will contact you. 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.

for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Director, Western Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant had four criminal convictions, and because he failed to submit requested court documents regarding his criminal record. The director therefore determined that the applicant had failed to prove that he had not been convicted of a felony or three or more misdemeanors that would render him ineligible under 8 C.F.R. § 210.3(d), and terminated his temporary resident status pursuant to 8 C.F.R. § 210.4(d)(2)(iii).

On appeal, the applicant stated that he was encountering difficulty in obtaining court documents that reflect that he had been cleared of criminal charges. The applicant requested a copy of the record of proceedings and indicated that a brief and/or additional evidence would be forthcoming within thirty days of compliance with his request.

The record shows that the Service (now Citizenship and Immigration Services, or CIS) complied with the request and mailed a copy of the record to the applicant on September 11, 1995. However, as of the date of this decision, the applicant has failed to submit any additional material to supplement his appeal. Therefore, the record shall be considered complete.

The status of an alien lawfully admitted for temporary residence under section 210(a)(2) of the Immigration and Nationality Act (INA) 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).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the INA, formerly section 212(a)(9) of the INA.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802). Section 212(a)(2)(A)(i)(II) of the INA, formerly section 212(a)(23) of the INA. An alien is also excludable if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the INA, formerly section 212(a)(23) of the INA.

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 INA, 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 May 20, 1988. He was notified by a letter dated November 30, 1990, of the director's intent to terminate his temporary resident status if he failed to submit requested documentation relating to his arrest record and the disposition of criminal charges brought against him. The applicant was allowed 30 days in which to comply. After the director determined that the applicant failed to respond, the director, on December 20, 1991, terminated the applicant's temporary resident status. By notifying the applicant on November 30, 1990 of the director's intent to terminate, CIS met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

The record reveals the following regarding the applicant's criminal history:

- A conviction for a violation of 8 U.S.C. § 1325, illegal return, on February 3, 1942;
- A conviction for a violation of the Immigration Act on May 12, 1945;
- A conviction for a violation of 8 U.S.C. § 1326, illegal reentry, on November 3, 1947; and,
- A felony conviction for smuggling marijuana on January 3, 1956.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by the Service. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with such requirements specified in this part."

Despite ample opportunity, the applicant provided no documentation regarding the disposition of criminal charges and convictions he has incurred. Furthermore, the applicant is ineligible for temporary resident status because of his felony smuggling and because of his other convictions. Within the legalization program, there is no waiver available to an alien convicted of smuggling a controlled substance, or of a felony or three misdemeanors committed in the United States. *See* section 210(c)(2)(B)(ii) of the INA.

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 INA, 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.