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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 1 2 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. 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

PUBLIC COPY

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 failure to provide criminal dispositions.

On appeal, the applicant furnishes a printout from the State of California Department of Justice, showing two arrests and one disposition.

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).

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 Act, formerly section 212(a)(9) of the Act.

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 July 22, 1989. He was notified by a letter dated November 13, 1990 of the director's intent to terminate his temporary resident status if he failed to submit requested documentation. The applicant was allowed 30 days in which to comply. After the applicant failed to respond, the director terminated the applicant's temporary resident status. By notifying the applicant on November 13, 1990 of the director's intent to terminate, the Service met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

The record reveals the applicant was arrested for Battery on July 17, 1985. Such charge was dismissed nine days later, according to the printout from the State of California Department of Justice. The same printout shows the applicant was also arrested for Taking Vehicle Without Owner's Consent/Vehicle Theft on July 29, 1987. However, no disposition is shown. These are the two charges for which the director advised the applicant he must provide dispositions.

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."

It is concluded the applicant has failed to provide a document, namely the disposition of the vehicle charge, necessary for the adjudication of his application. It is noted that the pertinent section of law, section 10851 of the California Vehicle Code, states that this offense is a felony in certain instances. Therefore, the applicant has not established that he was not convicted of this offense, which may have been a felony.

According to the notes of the legalization officer who interviewed the applicant on June 6, 1988, the applicant stated that he was arrested for Driving Under the Influence in 1980 and 1985, and was arrested in 1988 as well. The applicant indicated that he was fined and/or briefly jailed on each occasion. Thus, it appears that he was convicted of three misdemeanors.

On October 5, 1989, the applicant was apprehended attempting to smuggle his niece into the United States. Although he was not prosecuted, he is clearly inadmissible under section 212(a)(6)(E) of the Act, which states that any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States in violation of law is inadmissible. Although this inadmissibility may be waived, no purpose would be served in doing so, as the applicant is not eligible for temporary residence due to his failure to provide a criminal disposition.

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.