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

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

U.S. Citizenship and Immigration Services

L4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 24 2005

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]

PUBLIC COPY

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 sustained.

The director based the termination on the applicant's failure to provide a criminal disposition.

On appeal, counsel states that the applicant was never charged or convicted. He provides a certified letter from the Superior Court of Maricopa County, Arizona which indicates that there is no record of a conviction for the applicant in that jurisdiction.

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). His status may also be terminated if he commits an act which renders him inadmissible as an immigrant. 8 C.F.R. § 210.4(d)(2)(ii).

"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 March 31, 1988. He was sent a letter dated November 29, 1990 which discussed the director's intent to terminate his temporary resident status if he failed to submit requested documentation. However, the director did not send the notice to the correct

address, and it was returned to sender. Therefore, because the notice was not properly served, is not clear that the director met the statutory requirement of (properly) commencing termination proceedings prior to December 1, 1990. As favorable action is being taken on this appeal anyway, it is not necessary to resolve this issue.

The record reveals the applicant was arrested on December 14, 1986 in Buckeye, Maricopa County, Arizona for Attempted Burglary. In the notice of intent to terminate, the director emphasized that the applicant had to provide evidence that the charge was in error, or that he was cleared of guilt. The director advised the applicant to furnish a court record. As stated above, the applicant did not receive the notice, and the director terminated the applicant's status.

The applicant and counsel have provided two letters from the Superior Court of Maricopa County, Arizona, dated April 15, 1992 and March 25, 1994. In these letters, the Clerk of the Superior Court indicated that there were no criminal records pertaining to the applicant from January 1, 1979 through March 23, 1994.

It is concluded that the letters submitted by the applicant establish that he was not convicted of the offense that he was arrested for. Therefore, there is no basis to support the termination of status, and it shall be withdrawn.

**ORDER:** The appeal is sustained.