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Office of Administrative Appeals MS 2090  
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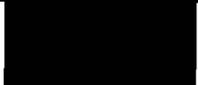
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 24 2009**

XST-88-014-03069

IN RE:

Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The termination of temporary resident status by the Director, Western Service Center, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director terminated the applicant's temporary resident status because he failed to provide court dispositions related to his criminal convictions.

On appeal, the applicant failed to address the basis for termination. The applicant instead asserted that he provided evidence to support his employment in agricultural work for more than 90 days during the period of May 1985 to May 1986. The applicant furnished a letter from his employer, grower [REDACTED], stating that the applicant performed seasonal work and qualified for his temporary resident status.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

The status of an alien lawfully admitted for temporary residence under section 210 of the Act may be terminated before the alien becomes eligible for adjustment to permanent resident status if the alien is convicted of any felony, or three or more misdemeanors in the United States. 8 C.F.R. § 210.4(d).

"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).

In the termination notice, the director determined that the applicant failed to overcome the grounds for termination as stated in the notice of intent to terminate (NOIT). The NOIT stated that a subsequent review of the applicant's file revealed that on April 11, 1983 and April 18, 1983 he was convicted as an *Unlicensed Driver* in violation of section 12500(a) of the California Vehicle Code. The NOIT further stated that the record shows that the applicant was charged on

May 5, 1984 and May 13, 1984 as an *Unlicensed Driver* and for *Failure to Appear* in violation of respective sections 12500(a) and 40508(a) of the California Vehicle Code.

The director relied on U.S. government criminal records to obtain the applicant's arrest record. The director's finding that the applicant is the individual who was convicted on April 11, 1983 and April 18, 1983 as an *Unlicensed Driver* is supported by identifying information in the criminal record, dated November 7, 1984. The criminal record was issued for [REDACTED] residing as of May 16, 1983 at [REDACTED], and formerly residing as of December 13, 1982 in Hilmar. Similarly, the applicant's Form I-700 and birth certificate list his name as [REDACTED]. The applicant indicated on his Form I-700 that he resided at [REDACTED] Turlock, California from 1982 to 1984 and he was employed in Hilmar, California during the requisite period of employment. This identifying information is sufficient evidence to support a finding that the criminal record relates to the applicant. The offense of *Unlicensed Driver* is a misdemeanor violation of section 12500(a) of the California Vehicle Code. Cal. Vehicle Code § 40000.11 (West 1988). A misdemeanor offense under the vehicle code constitutes a maximum sentence of imprisonment in the county jail not exceeding six months. Cal. Vehicle Code § 42002 (West 1988). As such, the criminal record indicates that the applicant has been convicted of two misdemeanors. See 8 C.F.R. § 245a.1(o).

Conversely, the director's finding that the applicant is the individual who was charged on May 5, 1984 and May 13, 1984 as an *Unlicensed Driver* and for *Failure to Appear* is not supported by identifying information in the criminal record, dated July 30, 1985. The criminal record was issued for [REDACTED], born on February 5, 1965, residing as of May 13, 1984 at [REDACTED]. Although the name [REDACTED] is similar to the applicant's name, his immigration record does not reflect that he resided in or near Pacoima during this period. Furthermore, the date of birth listed on the criminal record, February 5, 1965, is inconsistent with the date of birth listed on the applicant's birth certificate, December 3, 1957. In addition, the record states "convictions: none," indicating that the applicant does not have any prior convictions. This is inconsistent with the applicant's two misdemeanor convictions listed above, which provide that the applicant was convicted on April 11, 1983 and April 18, 1983 for driving without a license. Finally, both criminal records were printed from the same database; however the above record, dated November 7, 1984, does not reflect that the applicant was charged with criminal violations on May 5, 1984 and May 13, 1984. These inconsistencies cast doubt upon the likelihood that the criminal record, matched on a last name/first name search, relates to the applicant. Therefore, the AAO must withdraw the finding that the applicant was charged on May 5, 1984 and May 13, 1984 as an *Unlicensed Driver* and for *Failure to Appear*.

On June 9, 2009, the AAO sent a notice to the applicant informing him of the intent to dismiss his appeal because he failed to address the basis of the director's termination, and provided him with the opportunity to submit additional evidence in response to the director's decision. Specifically, the AAO requested the applicant to submit his criminal history record from the California Department of Justice and his driving history record from the California Department of Motor Vehicles.

In response to the request for additional evidence, the applicant furnished a California Department of Justice criminal history record, dated June 23, 2009, and a California Department of Motor Vehicles driver license information request, dated June 18, 2009. The results of the California Department of Justice criminal history record are based upon an individual's fingerprints. The applicant's criminal history record reflects that he does not have an arrest record with the State of California. The results of the California Department of Motor Vehicles driver license information request (a.k.a. driver license record) are based upon convictions of traffic offenses within the last 10 years.<sup>1</sup> The applicant's California Department of Motor Vehicles record reflects that he does not have an arrest record.

In conclusion, the current record of proceedings reflects that the applicant has been convicted of two misdemeanors. He is therefore not subject to the termination of his temporary resident status pursuant to 8 C.F.R. § 210.4(d). Accordingly, the AAO withdraws the termination of the applicant's temporary resident status. The AAO suggests that the director proceed with the applicant's adjustment to permanent resident status contingent upon the required criminal and background checks.

**ORDER:** The appeal is sustained.

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<sup>1</sup> <http://www.dmv.ca.gov/faq/genfaq.htm>