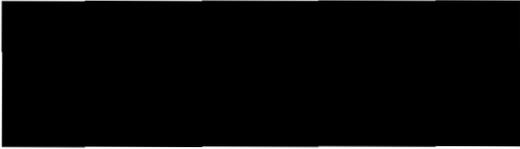




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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



LL

FILE:

XST-88-072-2023

Office: CALIFORNIA SERVICE CENTER

Date: FEB 23 2007

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of four misdemeanors. On appeal, counsel asserts that, because the applicant's convictions occurred prior to the enactment of the "one felony/three misdemeanor rule," they cannot be considered in this proceeding. Counsel also contends that convictions relating to entry into the United States without inspection should not be considered.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

"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).

The applicant was arrested on January 12, 1973 in Livermore, California for the federal offense of *Illegal Entry*, 8 U.S.C. § 1325. He was convicted of that offense in Sacramento, California and sentenced to six months confinement. On May 25, 1977, he was charged with the same offense at Yuma, Arizona, and was later convicted and sentenced to two months confinement.

The applicant was also charged with that offense on November 29, 1971, and November 22, 1972 at Livermore, and on April 21, 1976 and January 8, 1985 at Pleasanton, California. He was also charged on January 8, 1985 with *Reentry after Deportation*, 8 U.S.C. 1326. There is no evidence of convictions regarding these charges.

The applicant was arrested for *Drunk Driving* and *No License in Possession* on February 23, 1974 at Marysville, California. He was convicted of at least one of the charges and sentenced to 10 days confinement. Also, he was arrested for *Resisting/Delaying Officer*, section 148 of the California Penal Code, on August 12, 1972 in Marysville, and subsequently convicted.

Counsel does not contest the fact of the four misdemeanor convictions, but contends that only misdemeanor convictions occurring after the December 1989 passage of the Immigration Nursing Relief Act of 1989, which brought forth the "one felony/three misdemeanor" rule, may be considered in determining the applicant's eligibility. It is noted that such arguments were made in a class-action lawsuit. The district court

in *Naranjo-Aguilera v. INS*, Civ. No. S-91-1462 EJG/GGS (E.D. Cal. June 30, 1992), agreed with the arguments presented by counsel in the instant matter. The district court's decision, however, was subsequently overturned by the court of appeals in *Naranjo-Aguilera v. INS*, 30 F.3d 1106 (9th Cir. 1994).

The regulations must be accepted as validly adopted. See *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). The regulation in this case, stating that an alien who has been convicted of three or more misdemeanors is ineligible for temporary residence, does not specify that the convictions had to have occurred prior to the passage of the underlying 1989 law amendment. Therefore, the applicant's multiple misdemeanor convictions render him ineligible for temporary resident status. Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

Counsel asserts the convictions for *Illegal Entry* should not be considered because an applicant for temporary residence under section 210 of the Act cannot be found to be inadmissible as an immigrant without a visa under section 212(a)(7)(A) of the Act. It is true that that ground of *inadmissibility* does not apply to an applicant for temporary residence. That in no way relates to *ineligibility* for having been convicted of three or more misdemeanors.

An alien applying for adjustment of status has the burden of proving 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.