

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

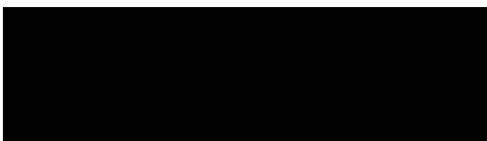
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41



FILE:

XFR 88 20 31032

Office: FRESNO

Date:

JAN 08 2010

IN RE:

Applicant:



APPLICATION: Termination of 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status pursuant to section 210 of the Immigration and Nationality Act, 8 U.S.C. § 1160, was terminated by the director, Fresno. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated temporary resident status because the applicant has three or more state misdemeanor convictions. The applicant is represented by counsel on appeal. Counsel asserts that the applicant was granted lawful permanent resident status in 1997, and that the termination of temporary resident status is rendered moot. Counsel does not address the immigration consequences of the applicant's criminal convictions.

An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3).

The AAO has reviewed all of the documents and evidence in the file, as well as counsel's assertions on appeal. We agree with the director's conclusions that the applicant is no longer eligible for temporary resident status because of his criminal convictions.

On October 24, 1977, the applicant pled guilty in Fresno Municipal Court to *Drunk Driving on Highway*, section 23102(a) of the California Vehicle Code, [REDACTED]

On July 16, 1987, in the Selma Judicial District Court, Fresno, California, the applicant pled guilty to *DUI*, section 23152(a) of the California Vehicle Code, [REDACTED]

On February 1, 1990 the applicant pled guilty in the same court to *DUI with priors*, section 23152(a) of the California Vehicle Code, [REDACTED] A second charge of driving without a license was dismissed.

On February 1, 1990 the applicant pled guilty in the same court to *DUI with priors*, section 23152(a) of the California Vehicle Code, [REDACTED] The court designated the applicant as a habitual traffic offender for 3 years.

On February 1, 1990 the applicant pled guilty in the Fowler-Caruthers Judicial District Court, Fresno, California, to *more than .10% blood alcohol while driving, with two priors*, section 23152(b) of the California Vehicle Code, [REDACTED] Two additional charges of DUI and driving with a suspended license were dismissed.

On February 1, 1990 the applicant pled guilty in the Fowler-Caruthers Judicial District Court, Fresno, California, to *more than .10% blood alcohol while driving, with two priors*, section 23152(b) of the California Vehicle Code, [REDACTED] Two additional charges of DUI and driving with excessive blood alcohol levels were dismissed.

No documentation has been submitted which would indicate, much less establish, that the convictions shown above related to infractions or offenses other than misdemeanors. The applicant is ineligible for temporary residence due to his six misdemeanor convictions.

Counsel's statement that the applicant was granted lawful permanent resident status in 1997 is incorrect. The record indicates that the applicant was initially granted temporary resident status but proceedings to terminate the applicant's status were commenced prior to his adjustment to permanent resident status. A Notice of Intent to Terminate was issued to the applicant on November 13, 1990, but proceedings were held in abeyance pending federal litigation. Ultimately, a Notice of Termination was issued to the applicant on April 20, 2009, and the applicant filed this appeal.

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 on account of his misdemeanor convictions. With limited exceptions not relevant here, no waiver is available for criminal ineligibility.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.