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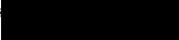


U.S. Citizenship  
and Immigration  
Services

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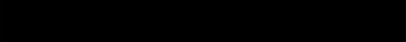


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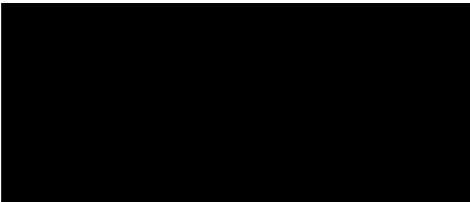
Office: CALIFORNIA SERVICE CENTER

Date: **AUG 1 2005**

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. The file has been returned to the service center that processed 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:** This matter is an application for temporary resident status denied by the Director, Western Service Center. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director initially denied the application because of the applicant's criminal record. The director finally denied the application because the applicant failed to assist the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) in determining the final disposition of the criminal charges against him.

On appeal, counsel requested a stay pending the resolution of litigation regarding misdemeanors and felonies committed before 1989.

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).

"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 the term "felony" of this section. 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).

"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 of the Act, the crime shall be treated as a misdemeanor 8 C.F.R. § 245a.1(p).

The FBI report revealed that on August 28, 1984, the applicant was convicted of a violation of section [REDACTED]. The report also showed that on July 15, 1978, the applicant was charged with violation of section [REDACTED] case No. [REDACTED] Madera, California; on July 27, 1985, the applicant was charged with violation of section 20002A VC Hit & Run, case No. [REDACTED] Fresno, California; and, on October 30, 1986, the applicant was charged with violation of section 664/459 PC Burglary, case No. [REDACTED] Kermit, California. The final outcome of these charges is unknown, as the requested court dispositions were not made available to the Citizenship and Immigration Services.

On April 27, 1992, the applicant was advised of the above arrests and was allowed 30 days in which to submit the court dispositions or evidence to overcome the director's finding.

The record does not contain any response to that request from the applicant.

The applicant has the burden to establish, with affirmative evidence that outstanding charges were dismissed or were in error. The applicant claimed on appeal to having submitted the court dispositions, however, the record does not contain any dispositions. A statement made by the applicant is not affirmative evidence and fails to meet his burden.

With respect to counsel's argument on appeal, the court of appeals in *Naranjo-Aguilera v. INS*, 30 F.3d 1106 (9<sup>th</sup> Cir. 1994) ruled that the district court had no jurisdiction to rule on the "one felony, three misdemeanor" regulation and its implementation by the Immigration and Naturalization Service. It left intact the Service's determination that conviction(s) of a felony or three or more misdemeanors committed in the United States

support a denial of an application for temporary residence as a special agricultural worker as well as a termination of temporary residence, regardless of when the convictions occurred. Further, it is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992).

Congress did not place any time restraints on the applicability of this section of law. The applicant's misdemeanor convictions render him ineligible to maintain temporary resident status. It is noted that this finding regarding felony and misdemeanor convictions in the special agricultural worker program is consistent with the finding in the general legalization (amnesty) program concerning felony and misdemeanor convictions.

An alien applying for temporary resident status had 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 temporary resident 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.