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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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425 I STREET, N.W.  
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

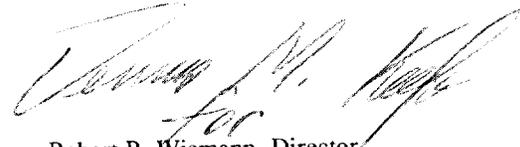
DATE: **NOV 25 2003**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended. 8 U.S.C. 1255a

ON BEHALF OF APPLICANT: [REDACTED]

INSTRUCTIONS: Attached is the decision rendered on your appeal. 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, the Service Center will contact you. 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 application for adjustment from temporary to permanent 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 of the applicant's criminal history.

The record does not contain the original appeal. The applicant was informed of this and he was requested to provide a copy of the appeal, or failing that, to provide a statement of his reason for filing the appeal. The applicant subsequently submitted an appeal in which he states that he disputes the record of conviction of traffic-related arrests. According to the applicant, one of his convictions was expunged. The applicant submitted additional documentation in support of this claim.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1).

"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 record reveals the following misdemeanor offenses in California:

- 1) On April 12, 1989, the applicant was convicted of a violation of section 14601.1(a) VC, driving when license suspended or revoked.
- 2) On April 13, 1989, the applicant was convicted of a violation of section 450508(a) VC, failure to appear.
- 3) On June 8, 1990, the applicant was convicted of a violation of section 450508(a), failure to appear.

4) On August 25, 1992, the applicant was convicted of a violation of section 40508(b) VC, failure to pay a court imposed fine.

On appeal, the applicant provided evidence that his April 12, 1988 conviction was set aside. The applicant contends that as a result, his appeal should be granted. However, under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Immigration and Nationality Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, Int. Dec. #3377 (BIA 1999); *Murillo-Espinoza v. INS*, 261 F. 3d 771 (9th Cir. 2001).

The applicant is ineligible for adjustment to permanent resident status because of his four misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1). 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.

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.

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

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