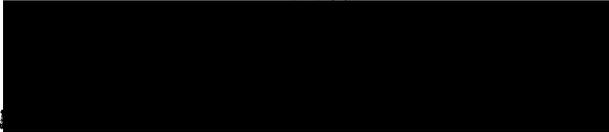


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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 15 2005

IN RE:

Applicant:



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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, California 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 a felony.

On appeal, the applicant concedes that he made a mistake that put him in this situation. He recounts the events that took place in his life during that period, and points out the positive aspects of his life since then. He also requests that humanitarian considerations be factored in.

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 applicant was sentenced on March 12, 1990 for a conviction of [REDACTED] or [REDACTED] Act With Child Under 14, a felony. Five years later probation was terminated, the conviction was set aside and the case was dismissed.

On January 4, 2002 the applicant pled guilty to Driving With .08% or More Blood Alcohol Content, a misdemeanor in California.

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the 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. Any subsequent action which overturns a conviction, other than on the merits of the case, is ineffective to expunge a conviction for immigration purposes. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The applicant points out that he is now, as has been for some time, a useful, contributing member of society. He asks that humanitarian considerations be factored into the decision regarding his application. However, there is no waiver available for ineligibility due to a felony conviction.

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

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