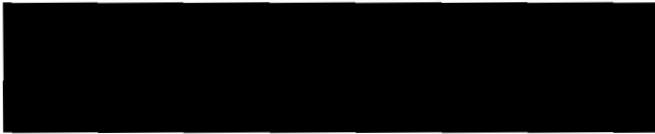


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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 13 2006  
XST 88 162 02016

IN RE: Applicant: [REDACTED]

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

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Western Service Center denied the application for temporary resident status. The matter was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The Director, California Service Center then terminated the applicant's status, and that action is now before the AAO on appeal. The appeal will be dismissed.

On appeal, from the director's decision to deny the applicant's application for temporary resident status, counsel pointed out that the applicant's convictions had been expunged, seemingly rendering him eligible for temporary resident status.

On appeal, from the director's decision to terminate the applicant's temporary resident status, the applicant apologizes for his previous wrongdoings, and requests a pardon.

It is noted that the applicant appears to be represented by a new counsel, [REDACTED] however, the required Form G-28, Entry of Appearance as Attorney or Representative was not submitted. Pursuant to 8 C.F.R. § 292.4(a), the AAO sought to clarify whether Mr. [REDACTED] authorized to represent the applicant in this proceeding. On October 16, 2006, the AAO sent a fax to counsel's office requesting that a properly executed Form G-28 be submitted. To date, however, the requested Form G-28 has not been submitted to the AAO. Accordingly, Mr. [REDACTED] will not be recognized in this proceeding. All representations will be considered, but the decision will be furnished to the applicant and to his counsel of record.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii).

"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 reflects the following offenses in the state of California:

1. On May 4, 1975, the applicant was arrested for drunk driving on the highway, a violation of section 23102 VC, a misdemeanor. On May 23, 1975, the applicant was convicted of this offense. On March 5, 1990, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
2. On July 13, 1975, the applicant was arrested for drunk driving on the highway, a violation of section 23102 VC and reckless driving, a violation of section 23103 VC, both misdemeanors. On November 18, 1975, the applicant was convicted of reckless driving. The remaining offense was dismissed. On October 26, 1989, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
3. On February 21, 1976, the applicant was arrested for drunk driving on the highway, a violation of section 23102 VC, a misdemeanor. On March 18, 1976, the applicant was convicted of this offense. On March 23, 1990, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

4. On April 14, 1976, the applicant was arrested for grand theft of property. On September 4, 1981, the applicant was charged with failure to appear on the grand theft charge. On September 25, 1981, the grand theft charge was dismissed. Case no. [REDACTED]
5. On May 22, 1976, the applicant was arrested and subsequently charged with failure to appear, a violation of section 40508(a) VC, a misdemeanor. On March 30, 1981, the applicant was convicted of this offense. Case no. [REDACTED]
6. On March 24, 1981, the applicant was arrested for disorderly conduct, a violation of section 647 PC, a misdemeanor and for violating section "23123 VC." On March 25, 1981, the applicant was convicted of both offenses. On February 27, 1990, the convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

It is noted that counsel provided an expungement order dated February 27, 1990, for case no. [REDACTED] which set aside a March 30, 1981 conviction for failure to appear. It is not known if this offense truly relates to number six as the court disposition provided did not indicate that the applicant was convicted of such offense.

7. On April 16, 1981, the applicant was arrested for assault with a deadly weapon, a violation of section 245 PC, and use of a gun in the commission of a crime. On July 9, 1981, the applicant was convicted of assault with a deadly weapon. It appears that the remaining offense was never filed or was summarily dismissed. On October 9, 1988, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
8. According to the FBI report dated June 25, 2004, on September 16, 1998, the applicant was arrested by the Sheriff's Office in French Camp for one count of force/assault with a deadly weapon other than a firearm. The applicant was charged in the Stockton Municipal Court with exhibiting a deadly weapon not firearm, a violation of section 417(a)(1) PC. The charge was subsequently dismissed.

The director, in denying the application, on August 26, 1993, concluded that the applicant had been convicted of three misdemeanors and, therefore, was ineligible for the benefit being sought. The case was forwarded to the LAU for review. On February 12, 1998, the LAU remanded the matter, upon finding that most of the convictions had been set aside and, therefore, would not serve to disqualify the applicant.

On the basis of a new interpretation, the director found the convictions were disqualifying and on October 19, 2004, the director issued a Notice of Intent to Terminate, advising the applicant of his intent to terminate the applicant's status as a temporary residence because of his seven misdemeanor convictions. The applicant was also advised that 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. 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 was granted 30 days in which to respond. In response, the applicant asserted that he had complied with all the courts' requirements regarding probation, community service and rehabilitation programs. The applicant stated that he had no arrests or problems with the law for 23 years and had been rehabilitated from his problems of the past.

The applicant's statement has been considered; however, neither the acknowledgement of past mistakes nor the applicant's satisfactory completion of all of his court obligations eliminates his convictions.

On appeal, the applicant requests a pardon. This office, however, does not, and cannot, grant pardons.

While not mentioned in the director's decision, it is noted that in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals (BIA) found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. The BIA reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains "convicted" for immigration purposes.

Although these precedent decisions were finalized after the applicant applied for temporary residence, 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). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all Citizenship and Immigration Services offices.

Therefore, pursuant to the above precedent decisions, no effect is to be given to the applicant's expungements.

The applicant has been convicted of seven misdemeanors and, therefore, is ineligible for the benefit being sought. 8 C.F.R. § 245a.2(u)(1)(iii). Within the legalization program, no waiver is 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 evidence that he or she is admissible to the United States under the provisions of section 245a of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

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