

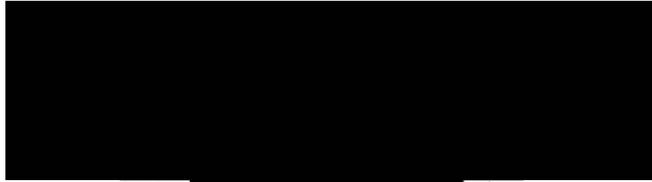
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U.S. Citizenship  
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Services

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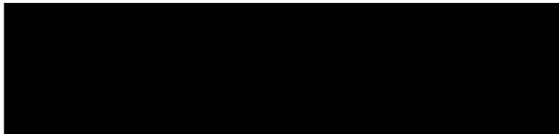
Office: CALIFORNIA SERVICE CENTER

Date: **NOV 27 2006**

INRE: Applicant: [REDACTED]

APPLICATION: Applicafioii or ljustment rom emporary to ermanentResident Status under  
Section 245A ofthe 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 Chief  
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 three misdemeanors in the United States.

On appeal the applicant asserts that he is unable to obtain the court dispositions from the courts as they no longer exist because they were destroyed pursuant to Government Code 68152. The applicant states he must be allowed "the opportunity to request from the court a court certified of my records" to establish his eligibility for the benefit being sought. However, more than two years later, no additional correspondence has been presented by the applicant.

It is noted that the applicant's Freedom of Information Act request was complied with on January 5, 2005 by Citizenship and Immigration Services.

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).

"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).

At the time of his interview, on June 1, 1988, the applicant informed the interviewing officer that he had been arrested approximately five times between 1981 and 1988. Accordingly, the applicant was given a Form I-72 requesting that he provide evidence of his arrests from 1981 to 1988. The applicant, in response, submitted a local summary criminal history document from the Dinuba Police Department in California, which indicated the following:

1. On June 5, 1983, the applicant was charged with driving under the influence, a violation of section 23152(a) **ve**. The applicant served 54 hours in jail, paid a fine and was placed on probation for three years.
2. On December 29, 1983, the applicant was arrested under warrant **no. [REDACTED]** for failure to remand, a violation of 1203.2 Pc. The applicant served 54 hours in jail and paid a fine.
3. On December 23, 1984, the applicant was arrested under warrant **no. or** failure to remand pursuant to a driving under the influence offense. The applicant served 54 hours in jail, paid a fine and was placed on probation for three years.
4. On May 12, 1985, the applicant was arrested for public intoxication, a violation of section 647(f) PC. The applicant was fined \$85.00. Case **no. [REDACTED]**

5. On July 21, 1985, the applicant was arrested under warrant **no\_\_for** failure to pay fine, a violation of section 166.4 PC pursuant to his May 12, 1985 offense for public intoxication. The applicant was fined \$85.00 for each offense.
6. On August 22, 1987, the applicant was arrested **for** public intoxication, a violation of section 647(f) PC. The applicant was fined \$85.00. Case no

On November 12, 1993, the director received an expungement order from the applicant, which indicated that on October 4, 1993, the conviction for number six above was expunged in accordance with section 1203.4 PC. The applicant indicated that he could not obtain expungement orders for numbers one and four above because "the court has informed me that the records do not exist anymore." The applicant, in a statement dated November 1, 1993, stated, in part:

A [sic] order to dismissed [sic] the conviction of June 5, 1983 Section violation 23152 VC and May 12, 1985 647(F) pc could not have been filed as the records do not exist.

According to the Federal Regulations, three (3) or more misdemeanors will disqualify you for your 245A application. I am now eligible as I only have two (2) misdemeanors.

It is noted that in response to a Notice of Intent to Terminate dated August 31, 2004, the applicant submitted a court document dated September 8, 2004 from the Tulare County Superior Court which listed the offenses in numbers four and six above as well as a charge of violating sections "23152(a)/(b) w/1 pr," driving under the influence of alcohol and driving with .10 percent or more alcohol in the blood. Case **no. \_\_** The court document also indicated that the cases "may have been destroyed" pursuant to Government Code 68152.

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction.

On appeal, the applicant contends, "[t]he local summary criminal history did not report the correct information. The summary was not a certified copy of my complete record."

The applicant, however, has not submitted any evidence to refute this document. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm, 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comma 1972)). The applicant, in his statement dated November 1, 1993, admitted that he had been convicted of three misdemeanors, This fact along with the expungement order and court documentation from Tulare County Superior Court supports the director's finding that the applicant had been convicted of at least three misdemeanors.

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).

In addition, 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.

Despite the expungement of the applicant's conviction in number six above, the applicant remains convicted, for immigration purposes, of the charge above.

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.

The applicant is ineligible for adjustment to permanent resident status because of his three misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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