

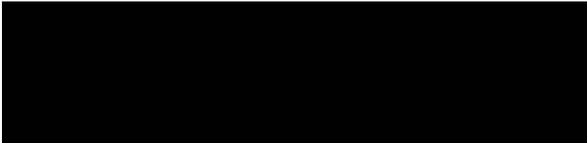
**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

41

**PUBLIC COPY**



FILE:

Office: CALIFORNIA SERVICE CENTER

Date: OCT 03 2006

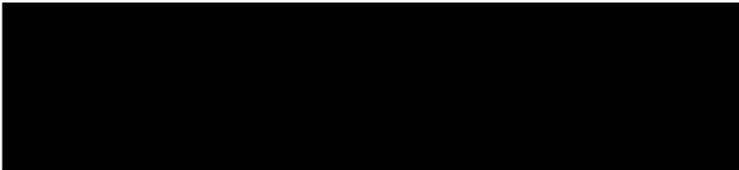
IN RE:

Applicant:



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. 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The termination of temporary resident status the Director, California Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status pursuant to section 8 C.F.R. § 245a.2(u)(1)(iii) because he had been convicted of a felony in the United States. *See* section 245A(b)(2)(B) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(2)(B).

On appeal, the applicant questions the determination that he had been convicted of the felony offense cited by the director. The applicant submits documentation in support of his appeal.

The status of an alien lawfully admitted for temporary residence under section 245A of the Act may be terminated if he or she is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 245a.2(u)(1)(iii).

"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).

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A).

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). "State rehabilitative actions which do not vacate a conviction on the merits or on any ground related to the violation of a statutory or constitutional right in the underlying criminal proceeding are of no effect in determining whether an alien is considered convicted for immigration purposes." *Id.* at p. 528.

The Board of Immigration Appeals (BIA) has sought to clarify and further expand on this holding as it is asked to review different types of post-conviction relief orders obtained by aliens subject to removal proceedings. In its most recent decision on the issue, the BIA, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), clarified that it was drawing a distinction between state court actions to vacate a conviction where the reasons were solely related to rehabilitation or to ameliorate immigration hardships, as opposed to state court actions based upon having found procedural or substantive defects in the underlying criminal proceedings. The BIA found that where the action is taken to address a procedural or substantive defect in the criminal proceedings, the conviction ceases to exist for immigration purposes, but where the underlying purpose is to avoid the effect of the

conviction on an alien's immigration status, the court's action does not eliminate the conviction for immigration purposes. *Id.* at p. 624.

The issue to be examined is whether the applicant's criminal conviction renders him ineligible for temporary resident status under the provisions of the section 245A of the Act.

The record contains a report from the Federal Bureau of Investigation (F.B.I.) that is dated November 30, 2004, which based upon fingerprint comparison reflects that the applicant, using the name [REDACTED] was arrested by the Los Angeles, California Police Department and charged in case number [REDACTED] with a felony violation of section 487, Grand Theft Auto, of the California Penal Code on February 1, 1992. The F.B.I. report shows that the applicant was subsequently convicted in the Superior Court of Los Angeles, California of a felony violation of section 10851(a), Taking a Vehicle Without the Owner's Consent Vehicle Theft, of the California Vehicle Code and sentenced to a prison term of two years.

On appeal, the applicant contends that he was not convicted of the felony offense cited by the director. The applicant submits a document from the Clerk of the Superior Court of California for the County of Los Angeles that states a search of the misdemeanor/felony indexes revealed no record making reference to the applicant under the name [REDACTED] with a date of birth of September 9, 1964. However, the court document provided by the applicant stating that no misdemeanor or felony violations existed under his full and actual name does not overcome the fact that the F.B.I. report noted in the previous paragraph demonstrates upon the basis of fingerprint comparison that he, using the name [REDACTED] was arrested on February 1, 1992 and subsequently convicted in the Superior Court of Los Angeles, California of a felony violation of section 10851(a), Taking a Vehicle Without the Owner's Consent Vehicle Theft, of the California Vehicle Code and sentenced to a prison term of two years.

Because the applicant has been convicted of a felony violation in the United States, his temporary resident status shall remain terminated pursuant to 8 C.F.R. § 245a.2(u)(1)(iii). Within the provisions of section 245A of the Act, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

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