



U.S. Citizenship
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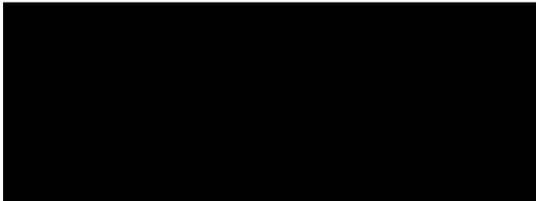
Office: CALIFORNIA SERVICE CENTER

Date: APR 13 2007

XEM 88 520 07159

IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and nationality Act, as amended, 8 U.S.C. § 1160.

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. Any further inquiry must be made to that office.



Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center. The matter was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The Director, California Service Center, reopened the proceedings and denied the application again. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period ending May 1, 1986. This decision was based on adverse information acquired by the Service regarding the applicant's claim of employment for [REDACTED]

The case was forwarded to the LAU for consideration. On March 31, 1994, the case was remanded for the introduction of additional adverse evidence.

The director reopened the proceedings for review, and subsequently denied the application because the applicant had been convicted of at least three misdemeanors in the United States.

On appeal, the applicant asserts that he is in the process of obtaining expungements for his convictions.

The regulation at 8 C.F.R. § 210.3(d)(3) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status.

"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 the term "felony," pursuant to 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).

"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. 8 C.F.R. § 245a.1(p).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reflects the applicant's criminal history in the state of California:

1. On November 17, 1991, the applicant was detained under the alias [REDACTED] by the Sheriff's Office in Alturas for receiving known stolen property, a violation of section 496 PC. On November 19, 1991, the district attorney declined to prosecute due to lack of sufficient evidence.
2. On May 18, 1996, the applicant was arrested in Los Angeles County for petty theft, a violation of section 484(a) PC. On July 16, 1996, the applicant was convicted of this misdemeanor offense. The applicant was sentenced to serve three days in jail and placed on probation for two years. Case no. [REDACTED]

3. On August 1, 1996, in Los Angeles County, the applicant disobeyed a court order. On August 22, 1997, the applicant was charged with contempt of court/disobey a court order, a violation of section 166(a)(4) PC. On October 29, 1997, the applicant was convicted of this misdemeanor offense. The applicant was placed on probation for three years. Case no. [REDACTED]
4. On December 28, 1998, the applicant was arrested for petty theft with a prior, a violation of section 484(a) PC/666 PC. On February 9, 1999, the applicant was convicted of this misdemeanor offense. The applicant was sentenced to serve 51 days in jail and placed on probation for five years. Case no. [REDACTED]
5. On February 11, 2006, the applicant was arrested in San Ysidro for alien smuggling, a violation of 8 U.S.C. § 1326. The final outcome is unknown.

The record also reflects that on or about January 8, 2000, the applicant was charged with violating 8 U.S.C. § 1325, attempted illegal entry into the United States and 18 U.S.C. § 1546 (a), counterfeit Form I-94. The applicant was served with a Form I-860 and expeditiously removed from the United States.

The director issued a Notice of Intent to Deny dated May 17, 2004, advising the applicant to submit the court dispositions for numbers 2, and 4 above. The applicant, however, failed to respond to the director's notice.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by Citizenship and Immigration Services. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with such requirements specified in this part."

It is concluded the applicant has failed to provide the court disposition necessary for the adjudication of his application.

On appeal, the applicant submits the court dispositions for number 2, and 4 above. The applicant asserts that he is in the process of obtaining expungements for his convictions.

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 Board of Immigration Appeals (BIA) revisited the issue in *Matter of Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002) and concluded that Congress did not intend to provide any exceptions from its statutory definition of a conviction for expungement proceedings pursuant to state rehabilitative proceedings.

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the 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 would be given to the applicant's expungements.

The applicant has been convicted of at least three misdemeanors and, therefore, he is ineligible for the benefit being sought. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. Petty theft is a crime involving moral turpitude. *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). Therefore, the applicant's convictions for these offenses render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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 210(c) of the Act, and is otherwise eligible for adjustment of status. 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.