



U.S. Citizenship
and Immigration
Services

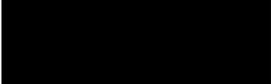
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 08 2007**

XSO 88 098 1076

IN RE:

Applicant:



APPLICATION: Application for Temporary 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Western Regional Processing Facility, denied the application for temporary resident status in a decision dated May 16, 1990. A timely appeal was filed with the Administrative Appeals Office (AAO).¹ The appeal will be dismissed.

The director denied the application based on the determination that the applicant had been convicted of seven misdemeanor offenses.

On appeal, the applicant claims to have complied with all the necessary documentary requirements for obtaining temporary residence and challenges the director's right to deny the Form I-687 application at this late date.

"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).

In the present matter, the record shows that the applicant had the following misdemeanor convictions at the time the denial was issued:

1. On October 4, 1978, the applicant was convicted of theft, a misdemeanor in violation of Section 484(a) PC. The applicant was sentenced to confinement of 19 days as a result of that conviction.
2. On April 17, 1979, the applicant was convicted of driving under the influence for which he was placed on probation for 12 months.
3. On August 22, 1986, the applicant was convicted of failure to appear, a misdemeanor in violation of Section 40508(a) VC. Docket # [REDACTED]

¹ The record shows that Citizenship and Immigration Services was unable to locate the appeal, Form I-694, which the applicant initially submitted upon receiving the decision denying the application for temporary resident status. However, the applicant was allowed the opportunity to either submit a copy of the original Form I-694 or to reconstruct the appeal and submit the reconstructed version for review. The reconstructed appeal has been submitted and is deemed to be a timely appeal submitted in response to director's 1990 denial of the Form I-1687.

4. On August 17, 1986, the applicant was arrested for driving under the influence, a misdemeanor in violation of Section 23152(b) VC and for driving with a suspended license, a misdemeanor in violation of Section 14601.1 VC. The applicant was convicted of both offenses on August 12, 1987 and placed on probation for three years. Docket # [REDACTED]
5. On November 10, 1986, the applicant was arrested for driving under the influence, a misdemeanor in violation of Section 23152(b) VC and for driving without a license, a misdemeanor in violation of Section 12500(a) VC. The applicant was convicted of both offenses on August 12, 1987 and placed on probation for three years. Docket # [REDACTED]

Additionally, the record shows that the applicant was arrested on July 7, 1986 for failure to appear, a misdemeanor in violation of Section 40508(a) VC. The final disposition for this offense is unknown.

Under the current 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 that 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).

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals 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. Therefore, pursuant to the above precedent decisions, even if the applicant had all seven of his misdemeanor offenses expunged, no effect is to be given to such actions.

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 (CIS) offices.

Although the applicant in the present matter submitted a timely appeal, all statements made in the reconstructed appeal addressed CIS's inability to locate the original appeal. The applicant's statements suggest that he interpreted CIS's request to provide a reconstructed appeal as an adverse action taken against the applicant himself. However, CIS's request merely informed the applicant that the original appeal was lost and would have to be reconstructed in order to proceed with proper adjudication of the application in the present matter. In no way did CIS suggest that the lost Form I-694 would somehow adversely affect the applicant or that the applicant was in some way denied the right to rebut the grounds cited for the initial denial. Nevertheless, the applicant failed to address the seven misdemeanor convictions, which served as the grounds for denial of the Form I-687 application.

Therefore, the applicant is ineligible for temporary resident status because of his seven 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.