

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE: [REDACTED]
XPW 91 193 0196

Office: LOS ANGELES

Date: DEC 12 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent 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 application for adjustment from temporary to permanent resident status was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he determined that the applicant failed to provide the requested final court dispositions for his criminal offenses and, therefore, precluded Citizenship and Immigration Services (CIS) from being able to determine whether the applicant is statutorily eligible to adjust from temporary to permanent resident status.

On appeal, the applicant explained that he did not intend to submit incomplete copies of his court dispositions and provides the final court dispositions for two of his offenses.

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). "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 reveals that the applicant was arrested, and on at least three occasions convicted, for the following misdemeanor offenses:

1. On September 27, 1975, the applicant was arrested for driving under the influence in violation of section 23102(a) VC. The final court disposition of this offense is unknown.
2. On March 7, 1983, the applicant was convicted of reckless driving in violation of section 23103 VC. Docket # [REDACTED]
3. On January 15, 1997, the applicant pled guilty to and was convicted of driving under the influence of .08% alcohol or more, section 23152(b) VC. The applicant was placed on probation for three years and ordered to pay fines totaling \$1,110. Case [REDACTED]
4. On October 31, 2005, the applicant pled *nolo contendere* to and was convicted of driving under the influence of .08% alcohol or more. The applicant was placed on probation for three years and ordered to pay fines totaling \$1,110. Case [REDACTED]

Any subsequent action that overturns a state 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.

Regardless, while the applicant has not provided the final court disposition for the offense cited in No. 1 above, the record shows that he stands convicted of at least three misdemeanors. He is therefore ineligible for adjustment to permanent resident status pursuant to 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.