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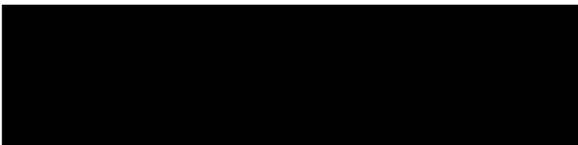
Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center initially denied the application for temporary resident status in a decision dated May 10, 1990. A timely appeal was filed with the Administrative Appeals Office (AAO). 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, counsel requested for a copy of the applicant's legalization file. The record shows that on January 31, 1991, the service complied with that request. Counsel also indicated that the applicant's convictions would be expunged pursuant to motions he intended to file. He asked that the present matter be continued to allow the applicant additional time in which to obtain the expungements. However, over sixteen years since the filing of the appeal, the record lacks evidence that any of the applicant's convictions had been expunged.

"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 December 3, 1973 the applicant was convicted of reckless driving a misdemeanor in violation of Section 23103 VC. Docket # [REDACTED]
2. On May 23, 1977, the applicant was convicted of driving under the influence, a misdemeanor in violation of Section 23102(a) VC, and driving without a license, a misdemeanor in violation of Section 12500(a) VC. Docket # [REDACTED]
3. On March 3, 1978, the applicant was convicted of driving under the influence, a misdemeanor in violation of Section 23102(a) VC. Docket # [REDACTED]
4. On September 6, 1978, the applicant was convicted of driving with a suspended license, a misdemeanor, in violation of Section 14601(a) VC. Docket # [REDACTED]

5. On December 10, 1987, the applicant was convicted of hit and run, a misdemeanor in violation of Section 20002(a) VC. Docket # [REDACTED]
6. On August 3, 1987, the applicant was convicted of driving under the influence, a misdemeanor in violation of Section 23152(b) VC. Docket # [REDACTED]

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 offices.

Finally, though not part of the director's 1990 decision, the applicant has since been charged with the following additional offenses:

1. On April 12, 1989, the applicant was charged with foreign hit and run resulting in property damage.
2. On December 7, 1990, the applicant was charged with driving under the influence of alcohol or drugs resulting in bodily injury.
3. On October 1, 1993, the applicant was charged with spouse beating.
4. On April 21, 1996, the applicant was charged with possession/manufacturing/sale of a dangerous weapon.
5. On August 1, 2000, the applicant was charged with four separate counts of failure to appear after written promise.

With the exception of the offense listed in No. 4 above for which the applicant was not prosecuted, the dispositions for the remaining charges are unknown. Regardless, 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.