

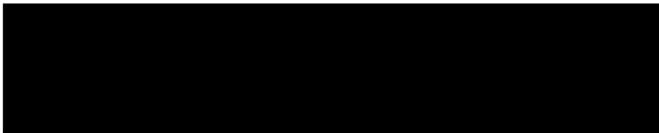


U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE:

XRV 88 010 2028

Office: Los Angeles

Date: JUN 12 2007

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. 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 temporary resident status as a special agricultural worker was initially denied by the Director, Western Service Center. The case was remanded for further action by the Chief, Legalization Appeals Unit. The District Director, Los Angeles, California, subsequently reopened the matter and denied the application again, and the case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had been convicted of a felony.

On appeal, the applicant states that the court subsequently granted his motion to dismiss his case. The applicant submits a document from the Superior Court of California, County of Riverside.

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).

The record reveals that the applicant was arrested in Riverside, California, on July 21, 2002, and charged with one count of making a criminal threat that could in death or great bodily injury in violation of section 422 of the California Penal Code. On April 2, 2003, the applicant pled guilty to this charge. It is noted that the applicant was charged with this offense as a felony, and he pled guilty to this offense as a felony. The court sentenced the applicant to 88 days imprisonment in the county jail, execution of sentence suspended, and placed the applicant on probation for a period of 36 months. The court ordered the applicant to pay a \$200 restitution fine and court fees in the amount of \$110.00. On November 29, 2004, the court granted the applicant's motion to dismiss the case. Pursuant to section 17(b)(4) of the California Penal Code, the court deemed count 01 a misdemeanor violation of section 422 of the California Penal code. Pursuant to section 1203.4(a) of the California Penal Code, the applicant's guilty plea was set aside and a plea of not guilty entered, and the case was dismissed. (Docket Number [REDACTED])

On appeal, the applicant states that his conviction was reduced to a misdemeanor, his guilty plea was withdrawn and a not guilty plea entered, and the case was dismissed. The applicant submits a copy of the court document reducing his conviction to a misdemeanor, setting aside his guilty plea and entering a plea of not guilty, and dismissing the case.

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.

There is no indication in this matter that the actions of setting aside of the applicant’s conviction was based on the merits of the case. Therefore, pursuant to the above precedent decisions, no effect is to be given to the court’s action.

The applicant stands convicted of a felony. He is therefore ineligible for temporary resident status as a special agricultural worker. No waiver of such ineligibility is available.

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