

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

W

FILE:



Office: LOS ANGELES

Date:

JUN 15 2007

XLB 89 042 02102

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The center director concluded the documentation submitted did not satisfy the applicant's burden of proof of having performed qualifying agricultural employment. This conclusion was purportedly based on derogatory evidence obtained from legacy Immigration and Naturalization Services attempts to verify the applicant's claimed employment for Nicolas Sandoval.

On December 7, 1989, the LAU remanded the case as the evidence of record was insufficient to refute the applicant's claim of employment.

The district director denied the application because the applicant failed to comply with the Form I-72, which requested the court disposition for his October 24, 1989, offense of lewd and lascivious acts with a child under the age of 14.

The FBI record dated August 11, 2006, reflects the following offenses in the state of California:

1. On October 24, 1989, the applicant was arrested under the alias [REDACTED] for lewd and lascivious acts with a child under the age of 14, a violation of section 288(a) PC.
2. On August 7, 2003, the applicant was arrested for annoy/molest child under 18, a violation of section 647.6(a) PC.

On July 26, 2006, the applicant was requested to appear for an interview on August 11, 2006, and to bring court dispositions relating to all arrests.

At the time of his interview, the applicant submitted court dispositions, which reflected the following:

- On February 15, 1995, the applicant was arrested for hit and run causing death/injury, a violation of section 20001(a) VC, and battery, a violation of section 242 PC, both misdemeanors. On June 5, 1995, the applicant was convicted of battery. The remaining offense was dismissed. Case no. [REDACTED]
- On August 7, 2003, the applicant was arrested for annoy/molest child under 18, a violation of section 647.6(a) PC, a misdemeanor. On November, 11, 2003, the charge was dismissed due to insufficient evidence. Case no. [REDACTED]

The applicant also submitted an expungement petition for his June 5, 1995 battery conviction. However, 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 intent 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 will be given to the applicant's expungement.

On August 11, 2006, the director issued a Form I-72, which requested the applicant to submit the court disposition for his arrest in number one above. The applicant, in response, submitted a court document from the Los Angeles County Superior Court indicating that a felony record check under the name [REDACTED] with a date of birth of October 31, 1971, was conducted and no record was found regarding an arrest on October 24, 1989.

The director, in denying the application, noted that the applicant had failed to provide the requested documentation as the FBI record reflects that he was arrested under a different name and date of birth on October 24, 1989.

On appeal, the applicant submitted court documentation from the Los Angeles County Superior Court, which indicated that on October 23, 1989, he was arrested in Los Angeles County for violating section 288(a) PC, a felony. On November 21, 1989, the case was certified to the juvenile court and proceedings were terminated. Case no [REDACTED]

Juvenile court proceedings in the United States' courts are civil rather than criminal in nature. The Board of Immigration Appeals has affirmed the well-settled principle that an act of juvenile delinquency is not a crime in the United States and, therefore, not a conviction for legalization purposes. *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (1981); *Matter of De La Nues*, 18 I&N Dec. 140 (1981).

Accordingly, the applicant has overcome the single deficiency cited in the director's Notice of Decision. The applicant stands convicted of one misdemeanor. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 210.3(d)(3).

Finally, the record contains information acquired at the time of the applicant's interview on August 11, 2006, which may impact adversely on the applicant's employment claim. The applicant put forth an employment claim that was not claimed on his Form I-700 application. If this information is to be used as the basis of a new decision, the applicant must first be advised thereof and offered an opportunity to rebut it and present evidence in his behalf before the decision is rendered. 8 C.F.R. § 103.2(b)(16)(i).

Accordingly, this matter will be remanded for the purpose of a new decision addressing the above. If the new decision is adverse, it may be certified to this office.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.