



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 20 2007

XSA 87 017 8034

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, California Service Center initially denied the application for temporary resident status in a decision dated June 17, 1988. A timely appeal was filed with the Administrative Appeals Office (AAO) where the matter was reviewed and remanded back to the service center for further consideration. The director subsequently issued another decision denying the application. The applicant's appeal remains pending with the AAO. The appeal will be dismissed.

Both denials were based on the applicant's five misdemeanor convictions.

In response to the initial denial, the applicant submitted an appeal requesting a copy of his legalization file. However, the request was made by an attorney whose Form G-28, Notice of Entry of Appearance of Attorney or Representative, was not properly executed, as it was not signed by the applicant. As such, counsel was notified that Citizenship and Immigration Services (formerly Immigration and Naturalization Services) could not comply with the request for a copy of the applicant's record. The applicant has not submitted any further information since the most recent denial was issued.

"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 was convicted of the following misdemeanor offenses at the time the initial denial was issued:

1. On February 10, 1987, the applicant was convicted of failure to appear in violation of section 40508(a) VC.
2. On February 11, 1987, the applicant was convicted of failure to appear in violation of section 40508(a) VC.
3. On February 13, 1987, the applicant was convicted of failure to appear in violation of section 40508(a) VC.
4. On July 27, 1987, the applicant was convicted of two separate counts of failure to appear in violation of section 40508(a) VC.

The record further shows that the convictions cited in Nos. 1 and 2 and one of the convictions in No. 4 were expunged. However, 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.

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