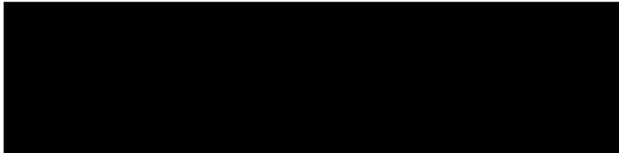




U.S. Citizenship
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MAR 13 2007

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:
XPW 90 244 00605

IN RE: Applicant: [Redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident pursuant to
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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of seven misdemeanors, and he was therefore ineligible for adjustment from temporary to permanent resident status.

On appeal, counsel submitted expungements orders for the applicant's convictions.

It is noted that a request for copy of the record of proceedings was complied with by the director on August 28, 2004.

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).

"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).

On his Form I-698 application, the applicant indicated that he had been arrested for traffic violations including section 40508(a), VC, failure to appear.

On October 23, 1990, the applicant was requested to submit court dispositions for all arrests and a Form H-6 from the California Department of Motor Vehicles (DMV). In response, the applicant submitted a Form K-4 from the DMV along with court documents which revealed the following misdemeanor offenses in the state of California:

1. On May 16, 1988, the applicant was arrested and subsequently charged with driving without a license, a violation of section 12500(a) VC, and failure to appear, a violation of section 40508(a) VC. On May 4, 1990, the applicant was convicted of both offenses. On May 31, 1991, the convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
2. On September 3, 1988, the applicant was arrested and subsequently charged with failure to appear, a violation of section 40508(a) VC. On May 4, 1990, the applicant was convicted of this offense. On August 11, 1992, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
3. On September 3, 1989, the applicant was arrested and subsequently charged with driving without a license, a violation of section 12500(a) VC, and failure to appear, a violation of section 40508(a) VC. On May 4, 1990, the applicant was convicted of both offenses. On August 11, 1992, the convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
4. On December 3, 1989, the applicant was arrested and subsequently charged with driving without a license, a violation of section 12500(a) VC. On May 8, 1990, the applicant was convicted of this offense and sentenced to serve five days in jail. On April 29, 1991, the applicant executed an expungement petition. Case no. [REDACTED]

5. On January 19, 1990, the applicant was arrested and subsequently charged with driving when privilege is suspended or revoked, a violation of section 14601.1 VC. On May 7, 1990, the applicant was convicted of this offense. The applicant was sentenced to serve 30 days in jail and placed on probation for one year. On August 26, 1992, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

Accordingly, on March 13, 1991, the director denied the application.

The record also contains a court disposition from the Los Angeles County Superior Court indicating that on December 30, 2001 the applicant was arrested for driving when license is suspended or revoked, a violation of section 14601.1(a) VC. On February 27, 2002, the complaint was amended and a charge of driving without a license, a violation of section 12500(a) VC was added. On February 27, 2002, the applicant was convicted of violating section 14601.1(a) VC. The applicant was placed on probation for three years and ordered to pay a fine or serve 10 days in jail. It is noted that the court disposition indicates that on February 27, 2002 the applicant pled *nolo contendere* to the driving without a license charge, but on April 29, 2002, the charge was dismissed pursuant to section 1385 PC. Case no. [REDACTED]

It is noted that through a recent FBI record check dated March 5, 2004, it was revealed that on June 18, 1989, the applicant was detained under the alias [REDACTED] by the Los Angeles Police Department for dumping offensive matter. Prosecution, however, was declined in the interest of justice.

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 intend 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 is to be given to the applicant's expungements.

The applicant is ineligible for adjustment to permanent resident status because of his eight misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

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