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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED]  
XPW 911580277

Office: LOS ANGELES

Date: DEC 02 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted.

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Director, Los Angeles, 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 three misdemeanor offenses in California. The director also noted that one of the applicant's convictions included a crime involving moral turpitude (CIMT), therefore also making the applicant excludable for admission into the United States. Section 212(a)(2)A(i)(II) of the Immigration and Nationality Act (Act) U.S.C. §1182(a)(2)A(i)(II).

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 U.S.C. §1255a(b)(1)(C); 8 C.F.R. § 245a.2(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 term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act, 8 U.S.C. § 1101(a)(48)(A).

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, 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 court documents in the record before the AAO reveal that the applicant was convicted on March 9, 1984 for a violation of section 23152(B) of the California Vehicle Code, *Driving with a Blood Alcohol Content of 0.1% or More* (Case No. [REDACTED]) and again on February 4, 1991 for a violation of section 23152(B) of the California Vehicle

Code, *Driving with a Blood Alcohol Content of 0.1% or More* (Case No. [REDACTED]), as well as a violation of section 273(a)(2) of the California Penal Code, *Cruelty to a Child*. These offenses are characterized as misdemeanors under California law.

On appeal, counsel for the applicant states that he was not advised of the immigration consequences of pleading *nolo contendere* to the two 1991 charges. Counsel also maintains that the two misdemeanor convictions in 1991 arise from “a single scheme of criminal conduct” and therefore cannot be construed as two separate convictions.

The record before the AAO does not contain evidence of any court ordered expungements due to a procedural defect in the underlying criminal proceedings. Even if the applicant had provided evidence of California State expungements, 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 by operation of a state rehabilitative statute. Any subsequent action that overturns a state 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.

Furthermore, the applicant’s contention that the two 1991 misdemeanor convictions arise from “a single scheme of criminal conduct” and cannot be counted separately is without merit. Federal regulations at 8 C.F.R. § 245a.18(a)(1) do not exclude multiple convictions arising from a single incident.

The applicant stands convicted of three misdemeanors. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available. The AAO need not address whether the applicant’s conviction for a violation of section 273(a)(2) of the California Penal Code, *Cruelty to a Child*, is a crime involving moral turpitude.

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