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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

XPW 92 245 0452

Office: LOS ANGELES

Date:

FEB 28 2008

IN RE:

Applicant:



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:

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 adjustment from temporary to permanent resident status was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant's three misdemeanor convictions rendered him statutorily ineligible for adjustment to permanent resident status.

On appeal, the applicant asserts that he is attempting to clear up his criminal record and asks to be allowed additional time in which to do so.

An applicant for adjustment from temporary to permanent resident status must establish: 1) that he or she is admissible to the United States as an immigrant (with certain exceptions) and 2) that he or she has not been convicted of any felony or three or more misdemeanors committed in the United States. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C).

"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 convicted of the following offenses in the State of California:

1. On August 30, 1990, the applicant was convicted of driving while under the influence, a misdemeanor, in violation of section 23152(a) of the California Vehicle Code and driving with a suspended license, a misdemeanor, in violation of section 14601.1(a) California Vehicle Code. The applicant was placed on probation for three years and ordered to pay a fine. (Docket # [REDACTED])
2. On March 17, 1992, the applicant pled guilty to and was convicted of driving with a suspended license, a misdemeanor, in violation of section 14601.2(a) of the California Vehicle Code. The applicant was placed on probation and ordered to serve 10 days in the Los Angeles County jail. (Docket # [REDACTED])

The director determined that the convictions cited above rendered the applicant ineligible to adjust his status to that of a permanent resident. On appeal, the applicant does not contest the criminal convictions. Rather, he requests additional time "to take care of these arrest convictions and clean my record." Thus, it appears that the applicant intends to seek expungements of his criminal convictions. The AAO notes that three months have passed since the appeal was received. However, no evidence has been submitted to suggest that any of the applicant's convictions have been expunged. Regardless of this fact and, more importantly, 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.

Accordingly, the applicant is ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1) based on his conviction of three misdemeanor offenses. No waiver of such ineligibility is available.

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