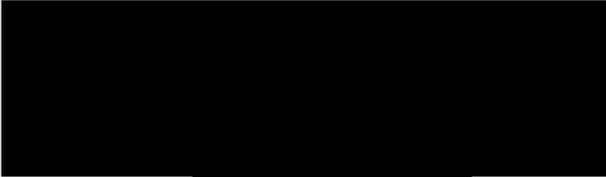


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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE: [REDACTED]
XPW 90 027 0337

Office: LOS ANGELES

Date: **MAY 29 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to National Benefits Center. 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.

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

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 had been convicted of a felony offense and was thereby statutorily ineligible for adjustment to permanent resident status.

On appeal, applicant submits a statement suggesting that her felony conviction has been expunged and provides additional documentation in an attempt to overcome the grounds for denial.

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).

"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).

In the present matter, the record reveals that on June 4, 1991, the applicant was convicted of vehicle theft, a misdemeanor, in violation of section 10851(a) of the California Vehicle Code. The applicant was ordered to serve 45 days in jail and was placed on probation for 36 months. (Case No. [REDACTED]) The record also shows that on August 2, 1993, the applicant was convicted of receiving known stolen property, a felony in violation of section 496.1 of the California Penal Code. Again, the applicant was ordered to serve 45 days in jail and was placed on probation for 36 months. (Case No. [REDACTED])

On October 26, 2007, the director sent a notice of intent to deny informing the applicant of the adverse findings based on her felony conviction. The record shows that the applicant submitted further documentation corroborating the director's prior findings regarding the applicant's criminal record.

Accordingly, the director issued a notice of denial dated December 7, 2007, concluding that the applicant's felony conviction rendered her statutorily ineligible for adjustment from temporary to permanent resident status.

On appeal, the applicant provides a copy of an order from the Los Angeles Superior Court, dated February 15, 2008, indicating that her 1993 felony conviction had been expunged. While the record shows that the applicant has completed the necessary paperwork requesting that her felony conviction be reduced to a misdemeanor, the court order shows that the conviction has been expunged. There is no indication that the applicant's conviction was, in fact, reduced to a misdemeanor.

Accordingly, in applying the definition of a conviction under section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A) the Board of Immigration Appeals 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. Thus, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. If, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains "convicted" for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *see also Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). In this case, there is no allegation or evidence that there were any legal defects in the underlying criminal proceedings. In fact, the court order indicates that the expungement was granted under section 1203.4 of the California Penal Code, a rehabilitative statute. Therefore, the fact that the expungement was granted has no effect in this immigration proceeding, and the applicant remains "convicted" of a felony for immigration purposes.

The applicant also provided letters from her mother and daughter, suggesting that she should be allowed to adjust her status to that of a permanent resident based on humanitarian grounds. However, Citizenship and Immigration Services does not have the discretionary authority to overlook the applicant's felony conviction.

In light of the applicant's conviction of a felony offense, she is ineligible for adjustment to permanent resident status pursuant to 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.