



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L 1

[REDACTED]

FILE: [REDACTED]
MSC 02 236 61868

Office: LOS ANGELES

Date: OCT 14 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and nationality Act, as amended, 8 U.S.C. § 1160.

ON BEHALF OF APPLICANT:

[REDACTED]

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 permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In his decision the director denied the application because it was determined that the applicant had been convicted of a felony.

On appeal counsel for the applicant asserts the applicant is eligible due to the fact that the Superior Court of California has modified the judgment nunc pro tunc to a misdemeanor.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 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).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

According to section 273.5(A) PC, Inflicting Corporal Injury on a Spouse is punishable as a misdemeanor or felony. If the court documents do not specify whether the defendant is being charged with a felony or a misdemeanor, an offense with this type of alternate punishment is considered a "felony" unless the defendant is, in fact, merely fined or sentenced to county jail, in which case the state considers the offense a "misdemeanor". See *MacFarlane v. Department of Alcoholic Beverage Control*, 326 P.2d 165, 167 (1958), 330 P.2d 769, 772 (1958). In this applicant's case, the "Certificate and Order of Magistrate, Guilty Plea to Felony" states that the applicant pled guilty to "Count 1 in violation of section 273.5(A) PC, a felony."

Furthermore, even if the court documents had not specified that the charge was a felony, the sentencing in the applicant's case would be consistent with a felony conviction; the judge did not merely impose a jail sentence, nor did he simply fine the applicant. See *People v. Banks*, 338 P.2d 214, 215 (1959), 348 P.2d 102, 113 (1959). (In *Banks*, the defendant pled guilty, the proceedings were suspended, and the defendant was placed on probation for a period of three years; the court held that the defendant had been convicted of a felony, not a misdemeanor.) We find that the applicant was, in fact, convicted of a felony, not a misdemeanor.

In this case the record reveals the following offenses:

1. On March 13, 1997, the applicant pled guilty and was convicted of PC 273.5(A), Inflicting Corporal Injury on a Spouse, a Felony, in the Superior Court of California, Riverside County, and sentenced to 36 months probation and ordered to pay restitution, court fines and costs. Case No. [REDACTED]

On July 29, 2005, the director notified the applicant that he was ineligible due to a felony conviction, and gave the applicant 30 days to rebut the information.

On appeal, counsel for the applicant asserts that the conviction has been reduced to a misdemeanor by motion nunc pro tunc and that CIS must follow a state's designation of a crime and cites *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 844 (9th Cir. 2003).

A state may reduce convictions to mitigate the effects of that crime in their respective jurisdictions. However, as a matter of public policy a state's reduction of a conviction to mitigate the effects on an individual's immigration benefits is inappropriate and violates the due process clause of the constitution. All authority to administer and enforce immigration laws are vested in the Secretary of Homeland Security. 8 U.S.C. §1103. Whether a particular offense under state law constitutes a "misdemeanor" or felony for immigration purposes is strictly a matter of federal law. See *Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995); *Cabral v. INS*, 15 F.3d 193, 196 n.5 (1st Cir. 1994). Federal immigration laws should be applied uniformly, without regard to the nuances of state law. See *Ye v. INS*, 214 F.3d 1128, 1132 (9th Cir. 2000); *Burr v. INS*, 350 F.2d 87, 90 (9th Cir. 1965).

An examination of the record reveals that the applicant was convicted of a felony on March 13, 1997, by the Superior Court of California, Riverside County. Nine years later the applicant submitted a motion nunc pro tunc to have the conviction reduced to a misdemeanor. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions which do not reduce a conviction on the merits are of no effect in determining the alien's status for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). Therefore, the applicant remains convicted of a felony for immigration purposes.

While the issue of the applicant's admissibility was not raised by the director, Inflicting Corporal Injury on a Spouse is a Crime of Moral Turpitude (CIMT). *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993). The applicant's felony conviction detailed above renders him inadmissible pursuant to

section 212(a)(2)(A)(i)(1) of the Act. Therefore, the application must also be denied for this reason. There is no waiver available for this ground of inadmissibility.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

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