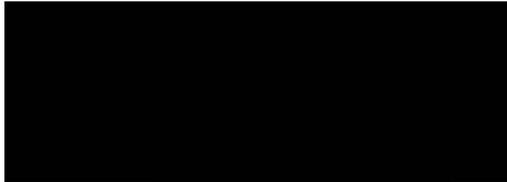


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Services

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FILE:

MSC 06 168 19532

Office: LOS ANGELES

Date:

OCT 15 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.

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 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 failed to provide evidence of a final court disposition.

On appeal, the applicant states that her court case is still pending. The AAO notes that the Notice of Appeal (Form I-694) was filed on May 21, 2008. To date, the record contains no additional information regarding the final disposition of the applicant's criminal charges. The record indicates that the applicant was charged on March 20, 2007, with *failure to obey a court order*, in violation of California Code section 166(A)(4) PC Misdemeanor, and held in contempt of court (Docket # [REDACTED]).

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). "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 record before the AAO does not contain evidence of a final disposition of the charges filed against the applicant, nor does there appear to be any orders of expungement. 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.

The charges against the applicant remain unresolved. Therefore, the AAO cannot determine whether the applicant is convicted of a single misdemeanor offense, which would not disqualify her for permanent residence under certain circumstances, or multiple misdemeanor or felony offenses, which would disqualify her for permanent residence.

The applicant is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). **This decision does not constitute a final notice of ineligibility.** If the applicant has overcome the grounds of denial, she is free to submit another application for permanent residence, with the appropriate fee, during the period of eligibility.

ORDER: The appeal is dismissed.