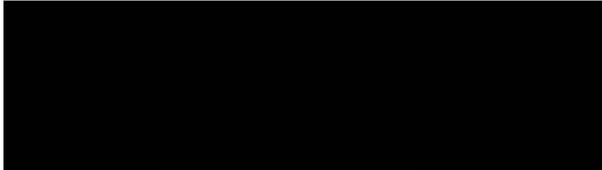


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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **OCT 22 2008**

WAC 01 093 52064

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. 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 remanded for further action, you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because he determined that the applicant's three misdemeanor convictions rendered him statutorily ineligible for adjustment to permanent resident status.<sup>1</sup>

On appeal, the applicant provides a blank Form I-694, Notice of Appeal, which includes only the applicant's name, signature and address. The applicant provided no basis for the appeal.

An alien who has been convicted of a felony or three or more misdemeanors is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(1).

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence in support of the claim. Nor has the applicant addressed the grounds stated for the denial. The appeal must therefore be summarily dismissed.

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

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<sup>1</sup> Because an applicant for legalization can be assimilated to the status of an applicant for admission, and because an application for admission is a continuing application, it is the law at the time an application is finally considered that determines admissibility. See *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). Therefore, even though Citizenship and Immigration Services may have determined, based on legal precedent in 1993, that the applicant's expungement of his three misdemeanor convictions was sufficient to warrant approval of his application for temporary resident status, the application for permanent resident status was filed on January 18, 2001. At the time of filing this application and continuing through the present, the statutory definition of "conviction" at section 101(a)(48)(A) of the Immigration and Nationality Act instructs that 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. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent, rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. See also *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000) (conviction vacated under a state criminal procedural statute, rather than a rehabilitative provision, remains vacated for immigration purposes). Therefore, pursuant to recent case law precedent, CIS must now accord different treatment to the applicant's expungements than it had at the time the applicant's application for temporary resident status was adjudicated and approved.