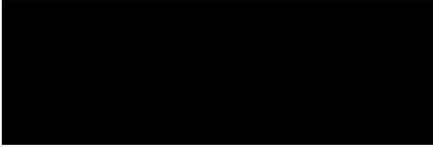


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invasion of personal privacy**

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

ADMINISTRATIVE APPEALS OFFICE
CS, AAO, 20 MASS, 3/F
425 I STREET, N.W.
Washington, D.C. 20536



FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **NOV 05 2003**

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:



INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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 F. Wiemann".

for
Robert F. Wiemann, Director
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 of the applicant's criminal record.

On appeal, the applicant states that the denial of his application was a violation of his constitutional rights.

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 reveals the following offenses in the State of California:

1. The applicant was convicted on June 11, 1979 for a violation of section 23102(a) VC, driving under the influence, a misdemeanor.
2. The applicant was convicted on June 10, 1982 for a violation of section 23152(a) VC, driving under the influence, a misdemeanor.
3. The applicant was convicted on November 23, 1982 for a violation of section 23152(a) VC, driving under the influence, a misdemeanor.
4. The applicant was convicted on October 30, 1985 for a violation of section 23152(b) VC, driving under the influence of alcohol with a blood level more than the legal limit, and a violation of section 14601.2(a) VC, driving while license suspended or revoked for DUI, both misdemeanors.

5. The applicant was convicted on March 12, 1986 for a violation of section 14601.2(a) VC, driving when license suspended or revoked for DUI, a misdemeanor.

The applicant subsequently provided records of expungement for the November 23, 1982, October 30, 1985 and March 12, 1986 convictions. However, under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Immigration and Nationality 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. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, Int. [REDACTED] (BIA 1999); *Murillo-Espinoza v. INS*, 261 F. 3d 771 (9th Cir. 2001). Despite the fact that the convictions were later set aside, the applicant remains convicted, for immigration purposes, of the offenses above.

On appeal, the applicant claims that this post-conviction relief was secured prior to *Matter of Roldan* and should therefore not be used against him or apply retroactively to his case. Nevertheless, precedent decisions are binding on all Citizenship and Immigration Services employees in the administration of the Act. See 8 C.F.R. 103.3(c).

The applicant is ineligible for permanent resident status because of his six misdemeanor convictions. 8 C.F.R. 245a.3(b)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

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