

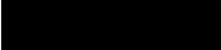


U.S. Citizenship  
and Immigration  
Services

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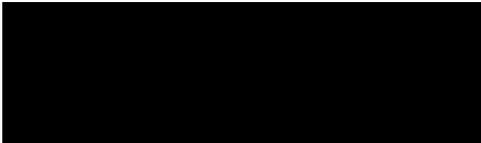
FILE:  Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: 

JAN 20 2005

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:



**PUBLIC COPY**

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Director, Western Service Center. The matter was remanded by the Administrative Appeals Office (AAO). The application was then denied by the Director, California Service Center, and is back before the AAO on appeal. The appeal will be dismissed.

The directors denied the application because the applicant had been convicted of four misdemeanors, or three misdemeanors and a felony.

On appeal to the original denial, counsel provided expungement orders. Neither counsel nor the applicant responded to the second denial, in which it was explained that expungements are not effective.

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 applicant was convicted of Failure to Appear on December 4, 1986. On March 21, 1989 he pled guilty to Driving Under the Influence of Drugs and/or Alcohol With a Blood/Alcohol Concentration of .20 Percent or Greater Causing Injury (felony). On the same date he pled guilty to Hit and Run (misdemeanor). On April 13, 1995 he was convicted of Driving With a Blood/Alcohol Content of .08 or Greater. All of these convictions took place in California. Counsel did not contest the fact of these convictions, but provided evidence that the March 21, 1989 convictions were later set aside, upon the petitions of the applicant. The felony was reduced to a misdemeanor in the same court action.

Under the 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. Any subsequent action which overturns a 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).

Thus, pursuant to the definition of "conviction" and *Matter of Roldan, supra*, the applicant was convicted of a felony and three misdemeanors. Therefore, he is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1).

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