

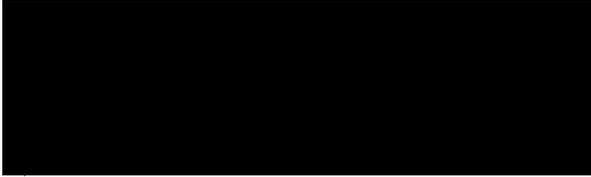
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **NOV 07 2005**

IN RE:

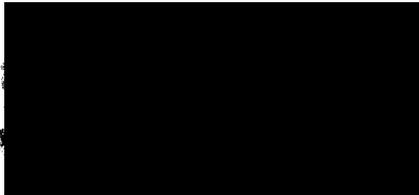
Applicant:



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:

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*

Robert P. 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 asserts that he is being "tried twice" for the same offenses, because the Immigration and Naturalization Service had already reviewed the issue and ruled favorably. He points out that two of the convictions were expunged, and the third one took place over 15 years ago. Counsel points out that all of the convictions took place a long time ago, and that the applicant is a sober, reformed, contributing member of society.

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 pled guilty or no contest to Driving Under the Influence with a Blood Alcohol Content Level of .10 or More, section 23152(b) of the California Vehicle Code, on June 28, 1985, December 20, 1985 and January 5, 1988. These three misdemeanors render the applicant ineligible for permanent residence.

The applicant points out that he is being "tried twice". When he first applied for temporary residence, his application was denied on the basis of the convictions. However, his appeal was sustained because he had obtained expungements of two of the convictions, and he was therefore considered to have only one remaining conviction.

Later, when the director adjudicated the current application for permanent residence, the law and rulings had changed regarding expungements. 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).

The applicant and counsel are correct in stating that the convictions occurred a long time ago. There is no reason to doubt the claim that the applicant is reformed and productive. However, within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

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