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U.S. Citizenship
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MAR 15 2007

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
XBA 88 004 01067

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and nationality Act, as amended, 8 U.S.C. § 1160.

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant had been convicted of at least three misdemeanors in the United States.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] of O.L.A. Raza, Inc., to act on behalf of the applicant, neither [REDACTED] nor O.L.A. Raza, Inc., are recognized as authorized or accredited representatives pursuant to 8 C.F.R. § 292.1(a).¹ As the appeal has been filed by the applicant, the decision will be furnished only to the applicant.

On appeal, the applicant submits a brief asserting that his convictions have been expunged.

The status of an alien lawfully admitted for temporary residence under section 210(a)(2) of Immigration and Nationality Act (the Act) may be terminated if he is convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.4(d)(2)(iii).

The regulation at 8 C.F.R. § 210.5(a)(2) requires that an alien who has been granted temporary resident before November 30, 1988, under section 210(a)(1) of the Act, and has maintained that status satisfactorily, shall be adjusted to lawful permanent resident status as of December 1, 1990. Termination proceedings must be commenced before the alien becomes eligible for the adjustment to lawful permanent resident status. 8 C.F.R. § 210.4(d)(3)(ii).

In this case, the applicant was granted temporary resident status on June 8, 1988. He was notified by a letter dated November 30, 1990 of the director's intent to terminate his temporary resident status because of his misdemeanor convictions. The applicant was allowed 30 days in which to [submit sufficient evidence to overcome the grounds of ineligibility. After the applicant failed to overcome his ineligibility, the director, on June 24, 1991, terminated the applicant's temporary resident status. By notifying the applicant on November 30, 1990 of the director's intent to terminate, the director met the statutory requirement of commencing termination proceedings prior to December 1, 1990.

"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 the term "felony," pursuant to 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).

¹ See <http://www.usdoj.gov/eoir/statspub/raroster.htm> for the list of accredited organizations and representatives.

The record reflects that on November 15, 1984, the applicant was convicted in the Kern County Municipal Court of false identification to a peace officer, a violation of section 148.9 PC, a misdemeanor. On December 27, 1990, the conviction was expunged in accordance with section 1203.4 PC. Case no. 08817.

The record also reflects that on March 10, 1986, the applicant was convicted in the Kern County Municipal Court in California of driving under the influence, a violation of section 23152(a) VC and carrying a loaded firearm, a violation of section 12031(a) PC, both misdemeanors. On December 27, 1990, the convictions were expunged in accordance with section 1203.4 PC. Case no. 12288.

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Immigration and Nationality Act (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. 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 Board of Immigration Appeals (BIA) revisited the issue in *Matter of Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002) and concluded that Congress did not intend to provide any exceptions from its statutory definition of a conviction for expungement proceedings pursuant to state rehabilitative proceedings.

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals (BIA) found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. The BIA 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.

Therefore, pursuant to the above precedent decisions, no effect is to be given to the applicant's expungements.

Although these precedent decisions were finalized after the applicant applied for temporary residence, it is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all Citizenship and Immigration Services offices.

In conclusion, the applicant has been convicted of three misdemeanors and his temporary resident status shall remain terminated.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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