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

[redacted]

DEC 0 2 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

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:

[redacted]

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant was convicted of a violation relating to a controlled substance.

On appeal, counsel states that the conviction was based on a plea of no contest, and was not litigated. She provides a court order that seemingly sets aside the plea and dismisses the case.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act.

The record reveals the applicant was arrested on July 20, 1994 for Possess/Purchase Cocaine Base for Sale under section 11351A of the California Health and Safety Code. He was subsequently convicted.

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).

It is not possible to conclude with certainty that the very brief court order furnished by counsel on appeal, setting aside the conviction, relates to the conviction in question here. However, assuming *arguendo* that it does, it has no effect pursuant to *Matter of Roldan, supra*.

Thus, for immigration purposes, the applicant remains convicted of the controlled substance offense shown above. There is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(II) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. *See* section 245A(d)(2)(B)(ii) of the Act.

In light of the applicant's inadmissibility, his other arrests and convictions need not be addressed.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, and is otherwise eligible for adjustment of status under this section. 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.