



U.S. Citizenship  
and Immigration  
Services

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FILE:

XHO 88 515 5003

Office: CALIFORNIA SERVICE CENTER

Date: MAY 24 2006

IN RE:

Applicant:

APPLICATION: Application for Temporary 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.

*Mari Johnson*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Western Service Center, terminated the applicant's temporary resident status. That action 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 numerous misdemeanors.

On appeal the applicant provides orders vacating most of his convictions. The applicant now maintains he has only two misdemeanor convictions.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii). "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 applicant was convicted of the misdemeanor offense of Failure to Appear, section 40508(a) of the California Vehicle Code, on the following dates:

1. April 28, 1989, docket [REDACTED]
2. February 20, 1990, docket [REDACTED]
3. February 20, 1990, docket [REDACTED]
4. February 20, 1990, docket [REDACTED]
5. November 17, 1989, docket [REDACTED]
6. February 20, 1990, docket [REDACTED]
7. February 20, 1990, docket [REDACTED]
8. March 14, 1990, docket [REDACTED]

He was also convicted of the misdemeanor offense of Failure to Pay a Fine, section 40508(b) of the California Vehicle Code, docket [REDACTED] on November 17, 1989.

The applicant has furnished orders under section 1203.4 of the California Penal Code vacating all of the convictions except for the fifth offense listed above and the Failure to Pay a Fine offense. Under the current 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 by operation of a state rehabilitative statute. Any subsequent action that 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).

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals 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.

There is no indication in this matter that the actions of setting aside the applicant’s convictions were based on the merits of the case. Therefore, pursuant to the above precedent decisions, no effect is to be given to such actions.

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.

Thus, even though the applicant’s convictions were set aside, the applicant stands convicted of nine misdemeanor crimes. He is ineligible for temporary resident status because of these convictions. 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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