

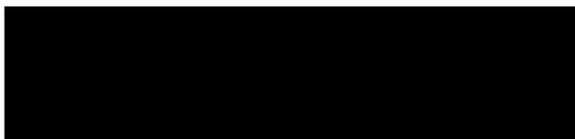
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U.S. Department of Homeland Security
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U.S. Citizenship
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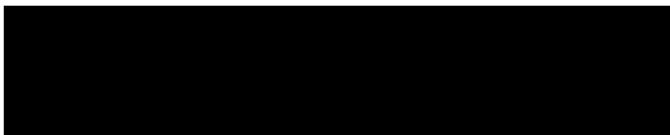
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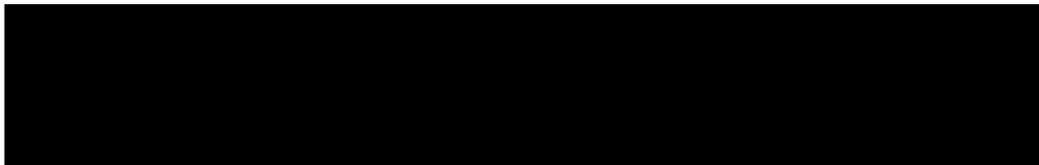
Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to 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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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

On appeal, the applicant asserts that some of his charges were dismissed and some of his convictions were expunged. The applicant asserts that he is therefore eligible for the benefit being sought.

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).

"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, on his Form I-687 application, indicated that he had been arrested for drunk driving in 1974, 1981 and twice in 1984.

The FBI record dated February 12, 1989 reflected the following offenses in the states of Illinois and California:

1. On June 5, 1976, the applicant was arrested under the alias [REDACTED] by the Chicago Police Department for theft. On July 1, 1976, the charge was dismissed.
2. On October 21, 1978, the applicant was arrested by the Chicago Police Department for aggravated battery.
3. On January 12, 1982, the applicant was arrested by the Sheriff's Office in Los Angeles, for receiving known stolen property.

The Form H-6 dated May 28, 1987 from the California Department of Motor Vehicles (DMV) reflected the following offenses:

4. On January 9, 1982, the applicant was arrested for carrying a loaded firearm in a public place, a violation of section 12031(a) PC, a misdemeanor. On May 6, 1982 the applicant was convicted of this offense. Case no. [REDACTED]
5. On February 26, 1984, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC, a misdemeanor. On March 19, 1984, the applicant was convicted of this offense. Case no. [REDACTED]
6. On April 3, 1984, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC, a misdemeanor. On July 16, 1984, the applicant was convicted of this offense. Case no. [REDACTED]

7. On April 26, 1984, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC, a misdemeanor. On August 4, 1984, the applicant was convicted of this offense. Case no. [REDACTED]

On November 8, 1991, the director issued a Notice of Intent to Terminate, advising the applicant of his intent to terminate the applicant's status as a temporary resident unless evidence was submitted establishing no convictions had occurred in items four through seven above. The applicant was also advised of his arrests in items two and three above and of his 1974 and 1981 arrest for drunk driving. The applicant was requested to submit the court dispositions for items two and three along with a Form H-6 or DL-414 from the California DMV. The applicant was given 30 days in which to submit the requested court documentation and DMV form. The applicant, however, failed to respond to the notice. Accordingly, on March 31, 1992, the director terminated the applicant's temporary resident status.

On appeal, the applicant asserts that his claim to have been arrested for drunk driving in 1974 was a mistake as the arrest actually occurred in 1984. The applicant asserts that the charge of receiving stolen property had been dismissed and that he had not been convicted of all the alleged convictions. Counsel and the applicant submit:

- The court disposition and expungement order for number seven above. The court disposition reflects that the applicant was charged with violating sections 23152(a) & (b) VC with a prior, driving under the influence of alcohol and driving with .10 percent or more alcohol in the blood; section 12025(a) PC, carrying a concealed weapon; and section 12031(a) PC, carrying a loaded firearm. On August 4, 1982, the applicant was convicted of violating sections 23152(a) VC and 12025(a) PC, both misdemeanors. On May 27, 1992, the applicant's convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
- The court disposition and an expungement order for item number four above. On January 12, 1982, the applicant was charged with violating sections 12025(b) PC, carrying a concealed weapon; 12031(a) PC, carrying a loaded firearm; and 496 PC, receiving known stolen property. On February 23, 1982, the applicant pled guilty to violating section 12031(a) PC, a misdemeanor. On May 6, 1982, the remaining charges were dismissed. On June 4, 1992, the applicant's conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
- An expungement order dated December 1, 1993, which reflected that the applicant had been convicted of *two* misdemeanor charges on July 16, 1984; sections 23152(a) VC, driving under the influence and 23152(b) VC, driving with .10 percent or more alcohol in the blood. The convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
- Court documentation and an expungement order from Cook County Circuit Court in Illinois for items one and two above. For number one, the theft charge was dismissed on July 1, 1976. Case no. [REDACTED] For number two, the aggravated battery charge was stricken without leave (SOL) on October 30, 1978. Case no. [REDACTED] On September 15, 2003, the arrests were expunged from the Chicago Police Department records.
- The court dispositions for numbers five and six above. Case nos. [REDACTED] and [REDACTED], respectively.
- A court disposition which reflects that on September 6, 1997, the applicant was arrested and subsequently charged with violating sections 23152(a) VC, driving under the influence; 23152(b)

VC, driving with .08 percent or more alcohol in the blood; and 2002(a) VC, hit and run causing property damage. On October 1, 1997, the applicant was convicted of violating section 23152(b) VC, a misdemeanor. The remaining charges were dismissed. Case no. [REDACTED]

- A court disposition which reflects that on September 20, 1999, the applicant was arrested and subsequently charged with violating section 23152(a) VC, driving under the influence. On January 18, 2000, the applicant was convicted of this misdemeanor charge. Case no. [REDACTED]

It must be noted that through a recent FBI record check dated June 15, 2004, it was revealed that the applicant had been arrested by the Sheriff's Office in Norwalk, California for assault with a firearm on October 25, 1988. The final outcome, however, is unknown.

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. 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 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.

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.

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

The applicant is ineligible for adjustment to permanent resident status because he has been convicted of at least seven misdemeanor convictions. 8 C.F.R. § 245a.3(c)(1). Within the legalization program, no waiver is available to an alien convicted of a felony or three or more misdemeanors committed in the United States. 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 245a of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

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