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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]
XSD 88 006 2011

Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2009

IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: This matter is a termination of temporary resident status by the Director, California Service Center, which is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant's application for adjustment from temporary to permanent resident status (Form I-698) had been denied.

On appeal, the applicant stated that the director erred in denying the applicant's application for adjustment from temporary to permanent resident status. The director denied the I-698 application, finding that the applicant failed to establish that he had satisfied the English and civics requirements.

The director issued a notice of intent to terminate temporary resident status to the applicant. In response, the applicant asserted that he was attending a state recognized accredited learning institution and submitted a letter and transcript from the San Diego Community College, which indicated he had enrolled in English and civics classes. In the notice of termination, the director found that the applicant had failed to provide a certificate of satisfactory pursuit establishing the applicant had completed 40 hours of English and U.S. history at the time his I-698 was denied.

The director afforded the applicant two opportunities to test for English and civics. According to the evidence in the record, the applicant failed such tests on April 10, 2003 and February 26, 2004. The director issued a request for evidence outlining the possible means to demonstrate he meets the English and civics requirements. The applicant submitted a transcript and letter from a community college, but it was insufficient because it did not establish that he had completed at least 40 hours of a minimum 60-hour course and was demonstrating progress according to the standards of the course. 8 C.F.R. 245a.1(s).

The AAO affirms the director's decision.

Beyond the decision of the director, the AAO notes that the applicant has three misdemeanor convictions. An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). "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 following offenses:

- On September 20, 1987, the applicant was charged on three counts: driving while intoxicated, section 23152(a) of the California Vehicle Code (VC), driving with a blood alcohol level of more than 0.08%, 23152(b) VC and driving without a license, 12500(a) VC. On December 21, 1987, he pled guilty to violating section 23152(a).
- On April 13, 1988, he was convicted of violating sections 12500(a) driving without license and 40508(a) failure to appear. On November 5, 1990, the court dismissed the latter two charges pursuant to section 1016(b) of the California Penal Code.

- On February 4, 1988, the applicant was charged with violating sections 21655 VC, designated lanes; and 16028(a) VC financial responsibility. He was convicted on both charges on February 24, 1988.
- On May 6, 1989, he was arrested and on August 4, 1989, convicted of violating sections 16028(a) financial responsibility and 22450 VC stop requirements.

The applicant's convictions for violating sections 23152(a), 12500(a), and 40508(a) of the California Vehicle Code are misdemeanors. 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. 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). "State rehabilitative actions which do not vacate a conviction on the merits or on any ground related to the violation of a statutory or constitutional right in the underlying criminal proceeding are of no effect in determining whether an alien is considered convicted for immigration purposes." *Id.* at p. 528. For this additional reason, the applicant is not eligible for temporary resident status.

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