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U.S. Citizenship  
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Services

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FILE:



Office: California Service Center

Date: AUG 29 2005

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.

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The termination of temporary resident status by the Director, Western Regional Processing Facility 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 three misdemeanors.

On appeal, the applicant indicates the misdemeanors should no longer render him ineligible for status because one was expunged and another one was purged.

The temporary resident status of an alien may be terminated if the alien is convicted of any felony, or three or more misdemeanors. 8 C.F.R. § 245a.2(u)(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 record reveals the applicant was convicted of Driving Under the Influence of Alcohol on August 6, 1986, and on August 2, 1988. He was also convicted of Unlicensed Driver on July 22, 1981. The applicant has not contested the fact of these three misdemeanor convictions that took place in California.

The 1988 conviction was later set aside in 1992, upon the petition of the applicant. Furthermore, an October 5, 1992 letter from the Deputy Clerk of the Municipal Court, North Orange County Judicial District indicates the 1981 charge was later purged.

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).

Thus, the 1988 conviction, which was subsequently set aside, remains in effect for immigration purposes. Also, as pointed out by the director, the fact that a record may have been purged does not mean that the underlying conviction is removed.

It is concluded that, pursuant to the definition of conviction at section 101(a)(48) of the Act and the interpretation set forth in *Matter of Roldan, supra*, the applicant was convicted three times of a misdemeanor offense. There is no waiver available for ineligibility due to three or more misdemeanor convictions.

The applicant's temporary resident status is terminated because of his three misdemeanor convictions. 8 C.F.R. § 245a.2(u)(iii).

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