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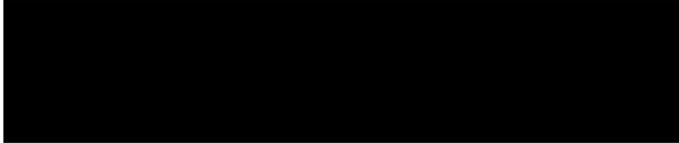
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2007
XNK 88 030 02038

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. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of four misdemeanors in the United States.

On appeal, the applicant requested a copy of the record of proceedings and an extension of time in which to submit a brief after receipt of said proceedings.

The director complied with the applicant's request on August 25, 2004. In response, the applicant provided expungement orders for some of his 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 applicant's criminal history in the United States as follows:

1. On June 22, 1980, the applicant was arrested and subsequently charged with driving without a license, a violation of section 12500(a) VC, and failure to appear, a violation of section 40508(a) VC, both misdemeanors. On June 16, 1981, the applicant was convicted of both offenses. It is noted that the applicant was also arrested for violating section 21651 VC and subsequently convicted of said violation. The Form H-6 from the California Department of Motor Vehicles, however, did not indicate which subsection the applicant violated (subsection (b) is a misdemeanor while subsections (a) and (c) are infractions) and, therefore, it cannot be determine that the violation resulted in a misdemeanor conviction. On July 7, 1993, the applicant's convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
2. On June 22, 1980, the applicant was charged with failure to appear, a violation of section 40508(a) VC, for violating section 4454(a) VC, failure to maintain registration in vehicle. On July 22, 1981, the applicant was convicted of this misdemeanor offense. Case no. [REDACTED]
3. On March 7, 1981, the applicant was arrested and subsequently charged with drunk driving on the highway, a violation of section 23102(a) VC, a misdemeanor. On March 20, 1981, the applicant was convicted of this offense. Case no. [REDACTED]
4. On November 20, 1981, the applicant was arrested and subsequently charged with drunk driving on the highway; a violation of section 23102(a) VC, a misdemeanor. On February 25, 1982, the applicant was convicted of this offense. The applicant was sentenced to serve two days in jail and ordered to pay a fine and successfully complete an alcohol program. The applicant subsequently violation his probation and on October 25, 1982, the applicant was sentenced to serve 30 days in jail. On December 7, 1989, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

5. On July 30, 1982, the applicant was arrested and subsequently charged with driving under the influence, a violation of section 23152(a) VC, and hit and run causing property damage, a violation of section 20002(a) VC, both misdemeanors. On October 25, 1982, the applicant was convicted of both offenses. Case no. [REDACTED].

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 temporary resident status because of his seven misdemeanor convictions. 8 C.F.R. § 245a.2(c)(1). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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.