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U.S. Citizenship  
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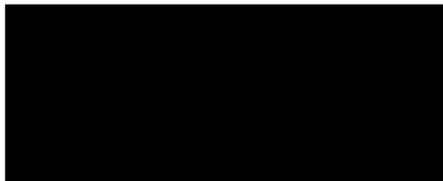
Office: CALIFORNIA SERVICE CENTER

Date: SEP 25 2007

XEX 18 920 08300

IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and nationality Act, as amended, 8 U.S.C. § 1160.

ON BEHALF OF APPLICANT: Self-represented

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 as a special agricultural worker was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant had been convicted of two felonies in the United States, and accordingly, denied the application.

The regulation at 8 C.F.R. § 210.3(d)(3) states, in part, that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status.

"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 the term "felony," pursuant to 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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

On May 22, 2007, the AAO sent a notice to the applicant, which informed him that as the record did not contain the actual court dispositions outlined in the director's Notice of Decision, the AAO could not uphold the director's decision. As such, the applicant was provided the opportunity to submit the final court dispositions for these convictions. The applicant was advised to submit the final court dispositions for other arrests mentioned below that were not addressed in the director's Notice of Decision. Specifically:

1. On August 31, 1989, by the Sheriff's Office in San Diego County, California for battery, a violation of section 243(a) PC. Booking no. [REDACTED]
2. On May 3, 1992, by the Sheriff's Office in San Diego County, California for driving under the influence causing bodily injury, a violation of section [REDACTED] VC. Booking no. [REDACTED]. The record reflects that the applicant was convicted of driving with .08 percent or more alcohol in the blood causing bodily injury, a violation of section [REDACTED] VC, on June 12, 1992 in the Vista Municipal Court, sentenced to 22 days in jails, and placed on probation for five years.<sup>1</sup> Case no. [REDACTED]
3. On February 24, 1996, by the Sheriff's Office in San Diego County, California for inflicting corporal injury upon a spouse/cohabitant. Booking no. [REDACTED]
4. On January 2, 1999, by the Sheriff's Office in San Diego County, California for driving with .08 percent or more alcohol in the blood causing bodily injury, a violation of section [REDACTED] VC, driving under the influence causing bodily injury, a violation of section [REDACTED] VC, and hit and run causing death or injury, a violation of section 20001(a) VC. Booking no. [REDACTED]

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<sup>1</sup> While the director, in his decision, noted a conviction date of June 29, 1992, the conviction is one and the same.

The record reflects that on April 26, 1999, in the Vista Superior Court, the applicant was convicted of violating section [REDACTED] VC, sentenced to serve 210 days in jail, ordered to pay a fine and placed on probation for five years.<sup>2</sup> The record also reflects that on January 5, 2004, the applicant's sentence was amended to 365 days in jail. Case no. [REDACTED]

5. On July 23, 2001, by the Sheriff's Office in San Diego County, California for driving under the influence, a violation of section [REDACTED] hit and run causing property damage, a violation of section [REDACTED] use/under the influence of a controlled substance, a violation of section [REDACTED] HS; false identification to a peace officer, a violation of section 148.9(a) PC; and driving while license is suspended, a violation of section 14601.1(a) VC. The record reflects that on December 4, 2001, the applicant was convicted of violating section [REDACTED] VC, in the Oceanside Municipal Court, and ordered to pay a fine. Case no. [REDACTED]
6. On September 12, 2003, by the Sheriff's Office in San Diego County, California for driving under the influence, a violation of section [REDACTED], and driving with .08 percent or more alcohol in the blood, a violation of section [REDACTED]

The applicant was also advised that under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Immigration and Nationality Act (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).

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.

Therefore, pursuant to the above precedent decisions, no effect would be given to any expungements.

The regulation at 8 C.F.R. § 210.3(b)(3) provides, in pertinent, part, that failure by the applicant to release information when such information is essential to the proper adjudication of the application may result in the denial of the benefit sought.

The applicant was granted 30 days in which to submit the requested court dispositions. However, more than 60 days later, no further correspondence has been presented by the applicant.

Declarations by an applicant that he has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by an

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<sup>2</sup> While the director, in his decision, noted a conviction date of March 24, 1999, the conviction is one and the same.

applicant for adjustment of status will be subject to verification by the Service. Failure by an applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence, and such evidence of admissibility or eligibility as may be required by the examining immigration officer in accordance with such requirements specified in this part."

It is concluded the applicant has failed to provide the court dispositions necessary for the adjudication of his application.

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 210(c) of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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