



U.S. Citizenship
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FILE:



MSC 05 089 10242

Office: LOS ANGELES

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IN RE:

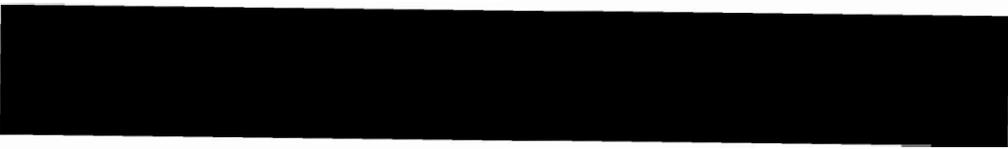
Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant had been convicted of at least four misdemeanors in the United States.

On appeal the applicant asserted that his attorney had requested expungements of the applicant's convictions, but had only received the judge's decision in one of the cases.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to lawful temporary resident status. See section 245A(a)(4)(B) of the Immigration and Nationality Act (INA) and 8 C.F.R. § 245a.2(c)(1).

As defined in 8 C.F.R. § 245a.1(o):

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).¹ 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.

Section 101(a)(48)(A) of the INA, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" as follows:

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, 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

¹ The regulation at 8 C.F.R. § 245a.1(p) defines "felony" generally as a crime punishable by imprisonment for more than one year, but makes an exception if such an offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less.

conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *See Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The record includes verified final court dispositions from the Superior Court of Los Angeles County confirming that the applicant was convicted of four misdemeanor crimes in the years 1991, 1996, 1997, and 1999.² With respect to the 1996 conviction, the applicant has submitted an order of the Superior Court judge, dated August 9, 2004, which denied the applicant's petition to withdraw his plea of guilty or set aside the guilty verdict, enter a plea of not guilty, and dismiss the action. No post-conviction rulings have been submitted with respect to the other three convictions.

Even if the applicant were to obtain orders vacating his four misdemeanor convictions, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. Unless it vacates a conviction on the merits, a state rehabilitative action is of no effect in determining whether an alien is considered convicted for immigration purposes. *See Matter of Roldan, id.* As discussed above, no evidence has been submitted that any of the applicant's convictions has been vacated on the merits.

Because of his four misdemeanor convictions, the applicant is ineligible under 245A(a)(4)(B) of the INA, and 8 C.F.R. § 245a.2(c)(1), for adjustment to lawful temporary resident status. There is no waiver 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 under the provisions of section 245A of the INA has the burden of proving by a preponderance of the evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status. *See* 8 C.F.R. § 245a.2. The applicant has failed to meet this burden.

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

² According to a fingerprints result report from the Federal Bureau of Investigation (FBI), the applicant was arrested yet again by the Los Angeles Police Department on May 11, 2004, and charged with selling liquor to a minor. There is no final court disposition of this arrest in the record.