

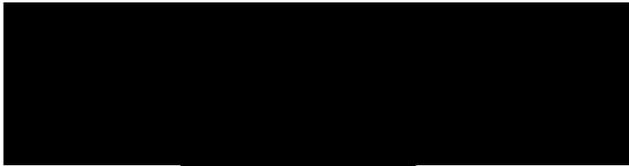
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L1



FILE: [Redacted]  
XPW 94 005 0026

Office: LOS ANGELES

Date: FEB 28 2008

IN RE: Applicant: [Redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent 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 "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant's felony conviction rendered him both inadmissible and statutorily ineligible for adjustment to permanent resident status.

On appeal, counsel asserts that the applicant's felony conviction has been reduced to a misdemeanor, leaving the applicant with two misdemeanor convictions. A supporting brief is submitted to further explain the procedural aspects, which, according to counsel, do not render the applicant inadmissible or statutorily ineligible for adjustment of status.

An applicant for adjustment from temporary to permanent resident status must establish: 1) that he or she is admissible to the United States as an immigrant (with certain exceptions) and 2) that he or she has not been convicted of any felony or three or more misdemeanors committed in the United States. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C).

"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).

The record reveals that the applicant was convicted of the following offenses in the State of California:

1. On September 13, 1989, the applicant was convicted of grand theft auto, a felony, in violation of section 487.3 of the California Vehicle Code. On November 19, 2000, the applicant's conviction was expunged pursuant to a judicial order. (Case # [REDACTED])
2. On December 29, 1992, the applicant was convicted of driving without a driver's license, a misdemeanor, in violation of section 12500(a) of the California Vehicle Code. (Docket [REDACTED])

On appeal, counsel asserts that the applicant's conviction has been expunged and, more importantly, that the underlying offense of which the applicant was convicted has been reduced from a felony to a misdemeanor. Counsel acknowledges that the expungement alone is insufficient to overcome the applicant's ineligibility, but states that the reduction of the offense from a felony to a misdemeanor suggests that the applicant has overcome the sole ground of ineligibility. However, after thorough review of the applicant's record, the AAO concludes that neither counsel nor the applicant has submitted evidence showing that the felony has been reduced to a misdemeanor. The record contains only the judge's order for expungement of the applicant's felony conviction, which, as counsel acknowledged earlier, is ineffective in curing the applicant's ineligibility. 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 by operation of a state rehabilitative statute. Any subsequent action that overturns a state 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).

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals 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.

In the present matter, while counsel asserts that the applicant only has two misdemeanor convictions, he provides no documentation establishing that the felony conviction was reduced to a misdemeanor. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Without evidence to support counsel's claim, the applicant stands convicted of a felony offense. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

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