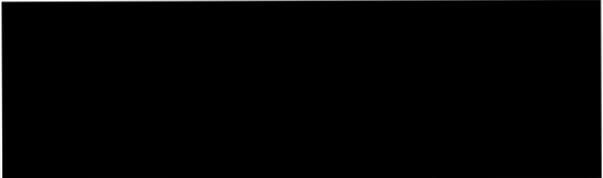


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services



LI

FILE: [REDACTED]  
MSC 05 349 10535

Office: LOS ANGELES

Date: **APR 08 2009**

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

John F. Grissom  
Acting 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 Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had been convicted of one or more felonies in the United States. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal the applicant admits to having misdemeanor convictions but no felony convictions. The applicant asserts that the misdemeanor convictions were subsequently dismissed. The applicant states that he requested the dismissals from the court and will obtain the documents within 40 days. More than two years later, however, no additional correspondence has been presented by the applicant.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulation provide relevant definition at 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 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).

“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).

In response to a Form I-72 issued on November 12, 2006, the applicant submitted court dispositions from the Los Angeles County Superior and Municipal Courts which revealed the following:

1. On May 13, 1991, the applicant was arrested and subsequently convicted of violating section 647(f) PC, public intoxication, a misdemeanor. The applicant was sentenced to serve one day in jail. [REDACTED]

2. On July 3, 1993, the applicant was arrested and subsequently charged with violating section 11-7 GMC, drinking in public park. On October 19, 1993, the applicant was convicted of this misdemeanor charge. The applicant was ordered to serve three days in jail. [REDACTED]
3. On June 6, 1994, the applicant was arrested and subsequently charged with violating section 23152(a) VC, driving under the influence, section 23152(b) VC, driving with .08 percent or more alcohol in the blood, and section 12500(a) VC, driving without a license. On July 5, 1994, the applicant was convicted of violating section 23152(b) VC, a misdemeanor. The applicant was placed on probation for three years, ordered to serve two days in jail and pay a fine. The remaining charges were dismissed. Case no. [REDACTED]
4. On July 4, 1994, the applicant was arrested and subsequently charged with violating section 647(f) PC, public intoxication and section 415(1) PC, challenge to fight in public. On August 16, 1994, the applicant was convicted of violating section 415 (1) PC, a misdemeanor. The applicant was placed on probation for one year and ordered to serve one day in jail. [REDACTED]
5. On August 28, 1994, the applicant was arrested and subsequently charged with violating section 12025(a)(2) PC, carrying a concealed weapon firearm on person. On September 7, 1994, the applicant was convicted of this misdemeanor charge. The applicant was placed on probation for two years and ordered to serve 90 days in jail. Case no. [REDACTED]
6. On September 13, 1998, the applicant was arrested and subsequently charged with violating section 245(a)(1) PC, assault with a deadly weapon. On October 15, 1999, court proceedings were terminated. [REDACTED]
7. On December 10, 2000, the applicant was arrested and subsequently charged with violating section 273.5(a) PC, inflicting corporal injury upon a spouse. On December 29, 2000, the applicant was convicted of this misdemeanor charge. The applicant was placed on probation for three years and ordered to serve 30 days in jail. [REDACTED]

The director, in denying the application, determined that the applicant had been convicted of "one or more felony offenses." This finding will be withdrawn as the court dispositions provided clearly reflect that the applicant was charged with and subsequently convicted of misdemeanors.

On appeal, the applicant asserts that the misdemeanor convictions were later dismissed. The applicant, however, has no provided any credible evidence to support his assertion. Simply 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)).

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.

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 would be given to the applicant’s expungements.

In addition to the offenses in numbers one through seven above, the FBI report dated February 21, 2006, revealed the following:

- On November 11, 1991, the applicant was arrested by the Glendale Police Department for violating section 273.5(a) PC, inflicting corporal injury upon a spouse. It appears that adjudication of guilt was deferred.
- On July 5, 1992, the applicant was arrested by the Glendale Police Department for violating section 211 PC, robbery. The applicant was subsequently charged with and convicted of violating section 12031(a) PC, carrying a loaded firearm in a public place.
- On February 14, 2001, the applicant was arrested by the Glendale Police Department for violating section 273.5(a) PC, inflicting corporal injury upon a spouse.
- On July 1, 2003, the applicant was arrested by the Glendale Police Department for violating section 273.5(a) PC, inflicting corporal injury upon a spouse.

The Form I-72 issued on November 12, 2006, requested that the applicant provide the court dispositions for all arrests. The applicant, however, failed to provide the court dispositions for his arrests on November 11, 1991, July 5, 1992, February 14, 2001 and July 1, 2003.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by U.S. Citizenship and Immigration Services (USCIS). The applicant must agree to fully

cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for temporary resident status because of his six 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. The applicant is also ineligible for the benefit being sought as he has failed to provide the court dispositions for the arrests on November 11, 1991, July 5, 1992, February 14, 2001 and July 1, 2003, necessary for the adjudication of the application

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.