

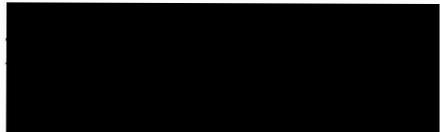


U.S. Citizenship
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FILE: [REDACTED]
MSC-04-316-10045

Office: LOS ANGELES

Date: **OCT 23 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.



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the director, California Service Center is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status on account of the applicant's four misdemeanor convictions.

On appeal, the applicant asserts that his convictions do not render him inadmissible and he submits a minute order issued by the Superior Court of California, San Bernardino County, dated May 22, 2009, that indicates that one of the applicant's misdemeanor convictions has been "dismissed in the interest of justice." The order identifies [REDACTED], a misdemeanor conviction for one count of violating section 23152(b) of the California Vehicle Code – driving with more than .08% blood alcohol. Court records in the file confirm the applicant's three convictions for DUI and an additional conviction for spousal abuse, in violation of section 273.5(a) of the California Penal Code. [REDACTED]

The court's order dismissing one of the four misdemeanor convictions is ineffective to eliminate the immigration consequences of the conviction. Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Immigration and Nationality 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. State rehabilitative actions that do not vacate a conviction on the merits as a result of underlying procedural or constitutional defects are of no effect in determining whether an alien is considered convicted for immigration purposes. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

Therefore, the applicant remains convicted of four misdemeanor offenses. 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 temporary resident status. 8 C.F.R. § 245a.2(c)(1).

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