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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 26 2010

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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.

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was approved on July 30, 1988. The Director, Western Service Center, subsequently terminated the applicant's temporary resident status. The Administrative Appeals Office (AAO) remanded a subsequent appeal. The director again terminated the application. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status, finding the applicant had been convicted of a felony and/or three misdemeanors.

On appeal, counsel for the applicant asserts that the applicant has only two misdemeanor convictions because several convictions were expunged.

An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3).

The record shows that the applicant has the following criminal record:

- On November 25, 1979, the applicant was charged with violating sections 23102(a) VC, *driving while intoxicated*, and 20002(a) VC, *hit and run*. He was convicted on the charges on December 14, 1979. On July 22, 1991, the convictions were expunged pursuant to section 1203.4 PC. Kern County Court Docket Number [REDACTED]
- On July 6, 1980, the applicant was arrested on charges of violating section 23102(a) VC, *driving while intoxicated*. He was convicted on the charge on August 5, 1980 in the Kern County Court. The conviction was expunged pursuant to section 1203.4 PC on February 26, 1991. Kern County Court Docket Number [REDACTED]
- The applicant was arrested on February 19, 1986 and charged on three counts. He pled guilty to violating section 23152(a) of the California Vehicle Code (VC), *driving while intoxicated* and section 12500(a) VC, *driving without license*. On March 5, 1991, the convictions were expunged pursuant to section 1203.4 PC. Kern County Court Docket Number [REDACTED]
- On September 17, 1985, the applicant was arrested on violations of sections 12500(a) and 5902(a) VC, *driving without license* and *unregistered vehicle*. Both charges were dismissed. Docket [REDACTED]
- On August 31, 1985, the applicant was charged with violating sections 664/459, 245(a), and 417(a)(2) of the California Penal Code (PC), *attempted burglary*, *assault with deadly weapon*, and *brandishing or using deadly weapon during quarrel*. On September 20, 1985, he pled guilty to *assault with deadly weapon*, 245a PC. On August 12, 1992 the convictions were expunged pursuant to section 1203.4 PC. Kern County Court Docket [REDACTED]

- Finally, on August 15, 1988 the applicant was charged with violations of section 242 PC, *battery* and section 647(f) PC, *public intoxication*. He pled guilty to both charges on September 2, 1988. The convictions were expunged pursuant to section 1203.4 PC on July 8, 2009. Kern County Docket Number [REDACTED]

On appeal, counsel for the applicant asserts that most of the applicant's convictions have been expunged, and therefore are not valid for immigration purposes. Nonetheless, these convictions stand for immigration purposes. The Ninth Circuit Court of Appeals, the jurisdiction in which this case arises, has ruled on the effect of post-conviction expungements pursuant to a state rehabilitative statute.<sup>1</sup> Generally, expungements or vacatur of a criminal conviction pursuant to the successful completion of some form of rehabilitation or probation are considered valid convictions for immigration purposes unless the conviction was dismissed because of a fundamental procedural or constitutional error in the trial court proceedings. *Matter of Roldan, supra*. Section 1203.4 of the California Penal Code is a state rehabilitative statute. The provisions of section 1203.4 allow a criminal defendant to withdraw a plea of guilty or nolo contendere and enter a plea of not guilty subsequent to a successful completion of some form of rehabilitation or probation. It does not function to expunge a criminal conviction because of a procedural or constitutional defect in the underlying proceedings. In this case, there is no evidence in the record to suggest that the applicant's conviction was expunged because of an underlying procedural defect in the trial court proceedings, and the vacated judgment remains valid for immigration purposes.

The applicant is ineligible for temporary residence because he has three or more misdemeanor convictions.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, and is otherwise eligible for adjustment of status under this section. 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.

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<sup>1</sup> See *Murillo-Espinoza v. INS*, 261 F.3d 771, 774 (9th Cir. 2001) (expunged theft conviction still qualified as an aggravated felony); *Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9th Cir. 2002) (expunged misdemeanor California conviction for carrying a concealed weapon did not eliminate the immigration consequences of the conviction); see also *de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1024 (9th Cir. 2007); *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1067 (9th Cir. 2003) (expunged conviction for lewdness with a child qualified as an aggravated felony).