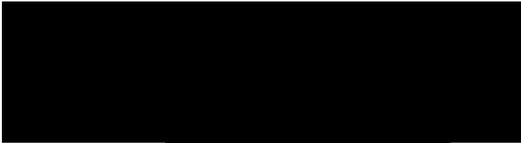




U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy



FILE:

SRC 99 107 51620

Office: TEXAS SERVICE CENTER

Date:

MAY 24 2007

IN RE:

Applicant:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The director denied the application because the applicant the applicant was convicted of a felony committed in the United States.

On appeal, counsel for the applicant asserts that the applicant does not have a felony conviction.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). "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).

"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). 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).

The record reveals that the applicant was arrested in Cotulla, Texas, on November 7, 1990, and charged with unauthorized use of a motor vehicle, a third-degree felony. On October 21, 1991, the applicant was convicted of this charge in the 218<sup>th</sup> Judicial District, LaSalle County, Texas. The court ordered that the applicant be punished by confinement in the Texas State Penitentiary for a term of ten years and that he pay a fine of \$1,000.00. The court suspended imposition of the sentence insofar as confinement in the State Penitentiary was concerned and ordered the applicant placed on probation for a period of ten years under the supervision of the Adult Probation Officer of LaSalle County, Texas. Imposition of the sentence as to the fine was not suspended. The court ordered the applicant to pay a fee of \$25.00 per month during the probation period, to pay court costs in the amount of \$284.50, to pay the fine in the amount of \$1000.00, and to pay restitution in the amount of \$1103.84 for benefit of CNA Insurance. (Case Number [REDACTED])

On appeal, counsel for the applicant contends that since the judgment of the court in this case was suspended, the this offense would not be classified as a "conviction" in the context of 8 U.S.C. § 1251(a)(4)(A), subsequently renumbered 8 U.S.C. § 1227, because it did not constitute "sentence to confinement" as defined to establish deportability and inadmissibility. Counsel states that an alien must be "either sentenced to confinement or confined" in a prison or corrective institution to be deportable or excludable. Counsel cites *Matter of De La Cruz*, 15 I&N Dec. 616, (BIA 1976) and *Matter of V*, 7 I&N Dec. 577 (BIA 1957).

Section 237(a)(2)(A)(i) of the Act, 8 U.S.C. § 1227, relates to classes of deportable, now removable, aliens. This section states that any alien who is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j)) after the date of admission, and is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable from the United States.

*Matter of De La Cruz* and *Matter of V* also relate to the question of the deportability of an alien who has been convicted of a crime involving moral turpitude that results in suspension of imposition of sentence.

Since unauthorized use of a vehicle is not a crime involving moral turpitude, and this proceeding is not a removal proceeding, the section of statute and Board of Immigration Appeals precedent decisions cited by counsel are not pertinent to the question of the applicant's eligibility for resident status.

Pursuant to 8 C.F.R. § 245a.1(p), "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**. An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). In this case, as previously stated, the applicant has been convicted of a third-degree felony and sentenced to ten years probation and a \$1,000.00 fine.

Counsel states that the applicant successfully completed his ten-year probation period and the case was subsequently dismissed. It is noted that counsel has not submitted any evidence to corroborate his statement. Even if the applicant's case was dismissed because the applicant successfully completed his ten-year probation period, the applicant remains ineligible for temporary resident status because of his felony conviction. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

As to counsel's assertion that the applicant should be granted temporary resident status under the Federal First Offender Act (FFOA), 18 U.S.C. § 3607, the FFOA is a limited federal rehabilitation statute that permits first-time drug offenders who commit the least serious type of drug offense to avoid the drastic consequences which typically follow a finding of guilt in drug cases. The applicant's conviction was a not a first-offender drug conviction under federal or state statute. Therefore, the FFOA is not relevant to the issue in this proceeding.

The applicant stands convicted of a felony. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of this ground of ineligibility is available.

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