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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE: [Redacted] Office: NATIONAL BENEFITS CENTER

APR 26 2004
Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Missouri 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 was ineligible for adjustment to permanent resident status under the LIFE Act, having concluded the applicant was inadmissible as an alien who has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802), as set forth in section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA).

On appeal, the applicant asserts that in view of the "petty offense exception," which involves amounts of controlled substances of 30 grams or less for personal use, his criminal offenses should not render him ineligible for permanent resident status under the LIFE Act.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See 8 C.F.R. § 245a.10.

An alien who has been convicted of any felony or of three or more misdemeanors committed in the United States is not eligible for adjustment to LPR status under LIFE Legalization. 8 C.F.R. § 245a.18(a)(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).

An eligible alien, as defined in 8 C.F.R. § 245a.10(d), may adjust status to Legal Permanent Resident (or LPR) status under LIFE Legalization if he or she is not inadmissible to the United States for permanent

residence under any provisions of section 212(a) of the Immigration and Nationality Act (INA). 8 C.F.R. §245a.11(d).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the INA. Such ground of inadmissibility may not be waived, pursuant to section 245A(d)(2)(B)(ii)(II) of the INA, except as it relates to a single offense of simple possession of 30 grams or less of marijuana.

According to section 212(a)(2)(C)(i) of the INA, any alien who the consular officer or the Attorney General knows or *has reason to believe* is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substance Act [21 U.S.C. 802]), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so, is inadmissible. [emphasis added]. Pursuant to section 245A(D)(2)(B)(ii)(II) of the INA, such inadmissibility may not be waived.

A review of the record indicates the following:

- An arrest of the applicant by the New York City Police Department on May 13, 1994, and subsequent guilty plea and conviction, for criminal possession of a narcotic with intent to distribute, a felony;
- An arrest of the applicant by the New York City Police Department on October 4, 1999, and subsequent guilty plea and conviction, for attempted sale of a narcotic drug, a felony; and
- An arrest of the applicant by the New York City Police Department on March 8, 2000, and subsequent guilty plea and conviction, for criminal possession of a controlled substance, a misdemeanor.

The applicant, on appeal, cites several cases, including *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988), by way of asserting that in view of the "petty offense exception," which involves amounts of marijuana of *30 grams or less for personal use*, his criminal offenses should not render him ineligible for permanent resident status under the LIFE Act. However, in this instance, the petty offense exception does not apply. The applicant in this case has separate convictions for criminal possession of a controlled substance with intent to distribute as well as attempted criminal sale of a controlled substance. These convictions do not involve mere personal usage of a marijuana but attempted *distribution* along with intent to distribute. Moreover, *Matter of Grijalva* holds that where the amount of marijuana an alien has been convicted of possessing cannot be ascertained from the alien's conviction record, the alien must come forward with credible testimony or other evidence to meet his burden of proving that his conviction is related to 30 grams or less of marijuana. However, in this case, the applicant was not convicted for possession of *marijuana* but rather, for sale and distribution of *cocaine*.

On appeal, the applicant also asserts that, although he had previously been a drug user, he has since been rehabilitated. Nevertheless, the INA does not provide any exceptions for aliens who have been accorded rehabilitative treatment under state law. Moreover, state rehabilitative actions which 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*, I.D. 3377 (BIA 1999).

As the applicant has pled guilty to and been convicted of controlled substance violations and illicit trafficking in controlled substances -- convictions which the applicant does *not* contest -- he is clearly inadmissible under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the INA. As stated above, these grounds of inadmissibility may not be waived. In addition, as the applicant has been convicted of two felonies, he is also ineligible under 8 C.F.R. § 245a.2(c)(1). The LIFE Act contains no provision allowing for a waiver of such ineligibility.

It should also be emphasized that the applicant is ineligible for permanent resident status under the LIFE Act as he has failed to establish having filed a timely application for class membership in any of the aforementioned class-action legalization lawsuits.

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