



U.S. Citizenship  
and Immigration  
Services

L-2

[REDACTED]

FILE:

[REDACTED]

Office: Los Angeles, California

Date:

AUG 04 2004

IN RE: Applicant:

[REDACTED]

APPLICATION:

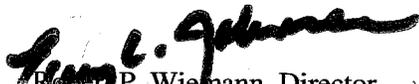
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 Los Angeles District Office. 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

**PUBLIC COPY**

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director concluded that the applicant was ineligible for adjustment to legal permanent resident status under the LIFE Act and 8 C.F.R. § 245a.18(1) because he had been convicted of three misdemeanors in the United States.

On appeal counsel asserts that one of the convictions has recently been vacated, which means that the applicant has only been convicted of two misdemeanors and is not barred by statute or regulation from adjusting status to legal permanent resident.

Under section 1104 of the LIFE Act, an applicant for permanent resident status must establish that he or she has not been convicted of a felony or of three or more misdemeanors committed in the United States. See section 1104(c)(2)(D)(ii) of the LIFE Act, 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(1). There is no waiver provision under the LIFE Act for this ground of inadmissibility to the United States. As discussed in the district director's decision, the applicant was convicted of three misdemeanors in the State of California, the last two of which stemmed from an arrest on February 9, 2000 for driving while intoxicated. The applicant was charged with driving under the influence of alcohol, in violation of California Vehicle Code section 23152(a), and driving with a blood alcohol content of 0.08 % or more, in violation of California Vehicle Code section 23152(b). The applicant pleaded guilty on both counts in a California state court on April 6, 2000. He was sentenced to three years probation, ordered to enroll in a county-approved alcohol program, subjected to various driving restrictions, and paid a fine of \$1,259.00.

On December 23, 2003 the applicant's counsel filed a motion to vacate judgment in California state court, arguing that the applicant was ignorant of the immigration-related consequences of pleading guilty to the two charges and would have taken his chances in a trial if he had realized that a total of three misdemeanor convictions would make him ineligible for adjustment to permanent resident status. Counsel argued that a provision of California law entitled the applicant to be advised of the adverse immigration consequences of pleading guilty to the two charges, and that court records did not demonstrate that the applicant received the required advisement. The applicant requested that the court allow him to withdraw his guilty plea and "to reinstate this matter on the Criminal Calendar." The court granted the "motion to withdraw plea" on January 16, 2004 and, pursuant to a plea bargain, allowed the applicant to plead guilty as to count one (driving under the influence of alcohol) while dismissing count 2 (driving with a blood alcohol content of 0.08 % or more). As a result of this court action, counsel argues, the applicant has only been convicted of two misdemeanors in the United States, not three.

Section 101(a)(48)(A) of the Immigration and Nationality Act (INA) defines the term "conviction" as "a formal judgment of guilt of the alien entered by a court or, *if adjudication of guilt has been withheld*, where (i) a judge or jury has found the alien guilty or *the alien has entered a plea of guilty* or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, *and* (ii) *the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty* to be imposed." (Emphases added.) The applicant's two convictions in April 2000 satisfied all of the statutory criteria, as highlighted. Moreover, the Board of Immigration Appeals has interpreted the statute as "provid[ing] that an alien is considered convicted for immigration purposes upon the initial satisfaction of the requirements of section 101(a)(48)(A) of the Act, and that he remains convicted notwithstanding a subsequent state action purporting to erase all evidence of the original determination of guilt through a rehabilitative procedure." See *Matter of Roldan*, 22 I&N 512, 523 (BIA 1999). Thus, in immigration proceedings the deciding factor is whether the applicant was initially convicted of a crime under state law, not whether the conviction was later vacated and the charge dismissed in a plea bargain pursuant to a motion such as that in the instant case.



As defined in section 101(a)(48)(A) of the INA, therefore, the applicant has been convicted of three misdemeanors in the United States. That makes him statutorily ineligible, under section 1104(c)(2)(D)(ii) of the LIFE Act, for adjustment to permanent resident status. See also 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(1).

Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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