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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

*La*

[Redacted]

FILE: [Redacted]

Office: National Benefits Center

Date: JUL 23 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: Self-represented

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, National Benefits Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

Section 1104(c)(2)(D)(i) of the LIFE Act specifies that an applicant for permanent resident status must establish that he or she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. (The applicant must also establish that (s)he has not been convicted of a felony or three misdemeanors in the United States, has not assisted in persecution activities, and is registered under the Military Selective Service Act, if required. See section 1104(c)(2)(D)(ii), (iii) and (iv) of the LIFE Act.) Section 245A(d)(2) of the INA (which allows the grounds for an alien's exclusion to be waived in certain cases) provides that any provision of section 212(a) of the INA (defining classes of aliens who are ineligible for visas or admission) may be waived on a case by case basis for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest," unless the grounds for the alien's exclusion involve certain enumerated offenses including, *inter alia*, conviction of a "crime involving moral turpitude" (section 212(a)(2)(A) of the INA) or trafficking in a controlled substance (section 212(a)(2)(C) of the INA). See section 245A(d)(2)(B) of the INA.

The director found that the applicant was inadmissible to the United States (a) under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA) for "crimes involving moral turpitude" and (b) under section 212(a)(2)(C) of the INA for "trafficking in a controlled substance," that waivers were not available under section 245A(d)(2)(B)(ii) of the INA, and that the applicant was therefore ineligible to adjust status under section 245A of the INA.

On appeal the applicant acknowledges that he committed the offenses for which he was convicted by the State of California, as cited in the director's decision. Nevertheless, the applicant contends that he qualifies for permanent resident status because he has rehabilitated himself and is a person of good moral character within the meaning of section 316(a) of the INA and 8 C.F.R. § 316.10(c). The applicant's reliance on the foregoing statutory and regulatory provisions is misplaced because they both refer to aliens who are applying for naturalization as U.S. citizens. In this LIFE Act proceeding the applicant is seeking permanent resident status, not U.S. citizenship. The applicant has not cited any other provisions of law, nor submitted any additional evidence, in support of his appeal.

After reviewing the documentation in the file, the AAO is not persuaded that the controlled substance charge brought against the applicant in June 1998 ("bringing a controlled substance into jail") was sufficient grounds for the director to determine that the applicant was inadmissible to the United States without the possibility of a waiver. The record does not indicate any evidentiary basis for the immigration officer's knowledge or reason for believing that the applicant was a "controlled substance trafficker" within the meaning of section 212(a)(2)(C) of the INA (emphasis added). Therefore, the AAO does not uphold the director's determination that the applicant is inadmissible to the United States, under sections 212(a)(2)(C) and 245A(d)(2)(B)(ii) of the INA, as the "trafficker" of a controlled substance. However, the director correctly determined that the applicant's conviction of crimes involving moral turpitude make him inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the INA, and that waivers are not available for such convictions under section 245A(d)(2)(B)(ii) of the INA.

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.