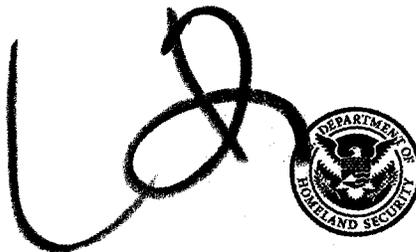


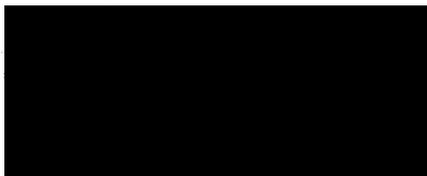
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prevent clearly unwarranted  
invasion of personal privacy

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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**



FILE:



Office: NATIONAL BENEFITS CENTER

**MAR 18 2004**  
Date:

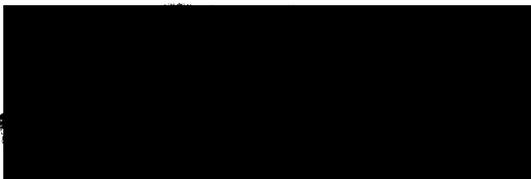
IN RE:

Applicant:



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:



**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 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.

A handwritten signature in black ink that reads "Robert P. Wiemann" with "for" written below it.

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 (AAO) on appeal. The appeal will be dismissed.

The director denied the application as he concluded that the applicant was inadmissible under section 212(a)(2)(C) of the Immigration and Nationality Act (INA), because the Service (now Citizenship and Immigration Services, or CIS) had reason to believe that he had been convicted of a crime involving controlled substance trafficking.

On appeal, counsel asserts that there is no legally admissible evidence to establish that the applicant was convicted of a crime involving controlled substance trafficking. Counsel submits a letter from the Deputy Clerk of the United States District Court for the Southern District of California in support of this assertion.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT. An alien who has been convicted of a felony or three or more misdemeanors in the United States is inadmissible and, therefore, ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act.

"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 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 U.S.C. 802). Section 212(a)(2)(A)(i)(II) of the INA, formerly section 212(a)(23) of the INA. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the INA, formerly section 212(a)(23) of the INA.

The record reveals the following regarding the applicant's criminal history:

- An arrest on June 22, 1973, at which time the applicant utilized the alias, [REDACTED] and subsequent conviction for illegal entry into the United States;
- An arrest on December 3, 1974, at which time the applicant utilized the alias [REDACTED] and subsequent conviction for illegal entry into the United States;
- An arrest on October 29, 1980, at which time the applicant utilized the alias, [REDACTED] and subsequent conviction for a violation of section 12031(a) of the California Penal Code, illegal possession of a loaded firearm on one's person or in one's vehicle; and,

- An arrest on June 25, 1987, at which time the applicant utilized his actual name or a variant thereof, [REDACTED] and subsequent conviction for illegal entry into the United States.

The applicant is inadmissible because of his four misdemeanor convictions. 8 C.F.R. § 245a.2(c)(1). Therefore, the applicant is ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act

In addition, the director found the applicant to be inadmissible under section 212(a)(2)(C) of the INA, because there was reason to believe that he had been convicted of a crime involving controlled substance trafficking. The Federal Bureau of Investigation (F.B.I.) Identification Record contained in the record reflects that the applicant was arrested for importing or attempting to import a controlled substance with intent to distribute on November 9, 1974, at which time the applicant utilized the alias [REDACTED]. The F.B.I. Identification Record shows that the applicant was convicted of this same offense and sentenced to 179 days of incarceration with credit for time served.

While counsel asserts that there is no legally admissible evidence to establish that the applicant was convicted of a crime involving controlled substance trafficking, there is no reason to believe that a F.B.I. Identification Record based upon fingerprint comparison is not legally admissible evidence. Counsel also submits a letter from the Office of the Clerk of the United States District Court for the Southern District of California, which states that a review of court records shows no evidence that [REDACTED] had ever been associated with any criminal or civil case ever before that court. However, the F.B.I. Identification Record reflects that the applicant has used his own name or variations thereof, as well as the aliases [REDACTED].

[REDACTED] This letter [REDACTED] a search of court records involving a variation of the applicant's actual name and does not demonstrate any review of records associated with the numerous aliases he has utilized. Therefore, this letter cannot be considered as sufficient to overcome the information contained in the F.B.I. Identification Record relating to the applicant's criminal history.

The F.B.I. Identification Record contains sufficient information to conclude that the applicant had been convicted of a crime involving controlled substance trafficking. Even if the applicant had not been convicted, the evidence in the record is such that CIS might very well conclude he is a controlled substance trafficker. CIS has reason to believe that the applicant has been an illicit trafficker in a controlled substance as stated in section 212(a)(2)(C) of the INA. There is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(I), section 212(a)(2)(A)(i)(II), or section 212(a)(2)(C) of the INA except for a single offense of simple possession of thirty grams or less of marijuana. See section 245A(d)(2)(B)(ii) of the INA. Therefore, the applicant is inadmissible under section 1140(c)(2)(D)(i) of the LIFE Act.

It must be noted that the director failed to make any determination as to whether the applicant meets the chief threshold requirement for eligibility for permanent residence under section of the 1104 of the LIFE Act. Specifically, 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), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993). See 8 C.F.R. § 245a.10.

The applicant has neither claimed nor documented that he applied for class membership. A review of the applicant's A-file, in existence since 1988, reveals no evidence to demonstrate that the applicant applied for class membership in a timely manner. Given his failure to even claim, much less document, that he filed a written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act on this basis as well.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

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