



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]

Office: NATIONAL BENEFITS CENTER

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: 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 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

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 1140(c)(2)(D)(ii) of the LIFE Act, because he had been convicted of three or more misdemeanors in the United States.

On appeal, the applicant contends that his criminal convictions had taken place over twenty years ago. The applicant requests that the ground of inadmissibility arising from such convictions be waived.

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).

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

- An arrest on February 2, 1973, and subsequent conviction for the misdemeanor offense of driving under the influence;
- An arrest on October 18, 1975, and subsequent conviction for the misdemeanor offense of driving under the influence;
- An arrest on January 4, 1976, and subsequent conviction for the misdemeanor offense of driving under the influence;
- An arrest on April 12, 1976, and subsequent conviction for the misdemeanor offense of drunk driving on a highway; and,
- An arrest on December 14, 1981, and subsequent conviction for the misdemeanor offense of drunk driving on a highway.

The applicant is inadmissible because of his five 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. Within the provisions of the LIFE Act, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

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 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.