U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date: SEP 03 2004

IN RE: Applicant: [redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. 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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Acting 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 because the applicant had been convicted of one felony and three or more misdemeanors in the United States, thereby rendering him inadmissible under section 1140(c)(2)(D)(ii) of the LIFE Act. It was also determined that the applicant was inadmissible under section 212(a)(A)(i)(I) of the Immigration and Nationality Act (INA, or the Act) by reason of having committed offenses constituting crimes involving moral turpitude and, as such, ineligible for adjustment to permanent resident status under the LIFE Act.

On appeal, counsel for the applicant asserts that the applicant has engaged the services of a criminal defense attorney in an effort to obtain post-conviction relief.

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 and 8 C.F.R. § 245a.11(d)(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 alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Jordan v. De George, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

The record reveals the applicant having committed the following offenses in the state of California:

- July 9, 1989: conviction in West Covina Municipal Court for petty theft, in violation of section 484A of the California Penal Code -- a misdemeanor;

- April 27, 1991: conviction in El Monte Municipal Court for disorderly conduct, in violation of section 415 of the California Penal Code -- a misdemeanor;

- November 30, 1994: conviction in Los Angeles Superior Court for knowingly receiving stolen property, in violation of section 496A of the California Penal Code -- a misdemeanor;

- February 3, 1995: conviction in San Bernardino Municipal Court for knowingly receiving stolen property, in violation of section 496A of the California Penal Code -- a misdemeanor;

- April 13, 1997: conviction in San Bernardino Superior Court for inflicting bodily injury on spouse/cohabitant, in violation of section 273/5A of the California Penal Code -- a misdemeanor;

- April 13, 1997: conviction in San Bernardino Superior Court for false imprisonment, in violation of section 236 of the California Penal Code -- a misdemeanor; and

- April 13, 1997: conviction in San Bernardino Superior Court for First Degree Criminal Storage of Firearms, in violation of section 12035/B1 of the California Penal Code -- a felony.

Neither counsel nor the applicant, on appeal, has contested these convictions. The applicant is ineligible for adjustment to permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1) due to his having been convicted of at least one felony and more than three misdemeanors. In addition, as the applicant's offenses constitute crimes involving moral turpitude, the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available to an alien inadmissible under this section of the Act.

As the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and ineligible under section 1140(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1), he may not apply for adjustment to permanent residence under section 1104 of the LIFE Act.

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