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U.S. Citizenship
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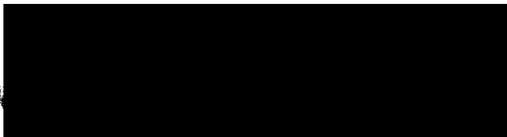
FILE: [REDACTED] Office: Los Angeles

Date: JUL 07 2005

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:



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

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

The district 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 misdemeanors in the United States.

On appeal, counsel asserts that applicant's three misdemeanor convictions arose out of the same incident. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS) failed to recognize that the applicant's criminal convictions are not final in that the convictions can be vacated upon his completion of probation. Counsel declares that the United States Ninth Circuit Court of Appeals has stated that the Service cannot build a case on vacated convictions. Counsel states that the holding relating to vacated or expunged criminal convictions reached in *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999), is applicable only in immigration proceedings.

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 Immigration and Nationality Act (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 who has been convicted of a felony or of three or misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1).

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

A review of the record reveals that the applicant was convicted of the following three misdemeanor offenses in the Municipal Court of Southeast-H.P. Judicial District, County of Los Angeles, State of California, on December 10, 1996:

- A violation of § 23152(b) of the California Vehicle Code, driving a vehicle under the influence of an alcoholic beverage with 0.08 percent or more, by weight, of alcohol in his or her blood;
- A violation of § 20002(a) of the California Vehicle Code, leaving the scene of a motor vehicle accident involving property damage; and,
- A violation of § 12500(a) of the California Vehicle Code, driving without a valid driver's license.

Counsel's assertion that the effect of the applicant's three misdemeanor convictions is somehow diminished because such convictions arose out of the same incident is erroneous. It is a well-accepted principle in criminal law that an individual can be charged with and convicted of multiple criminal offenses as a result of an act or actions in a single incident. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with 4 separate counts and he was convicted of three separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of three separate and distinct misdemeanor offenses.

While counsel contends that the Service and its successor CIS failed to recognize that the applicant's criminal convictions could be vacated upon his completion of probation, the record contains no evidence to show that a court of any level has subsequently vacated or expunged these three misdemeanor convictions. Although counsel declares that the United States Ninth Circuit Court of Appeals has stated that the Service and its successor CIS cannot build a case on vacated convictions, he has failed to cite the specific decision in which that court issued such a holding. Even if the applicant produced evidence to show that a State of California court had vacated or expunged his three misdemeanor convictions, such action would have no effect in the current immigration proceedings, an application for permanent residence under the provisions of section 1140 of the LIFE Act. No effect is to be given, in immigration proceedings, to a state action that purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan, supra*.

The applicant is inadmissible because of his three misdemeanor convictions under section 1140(c)(2)(D)(ii) of the LIFE Act. Further, the applicant is ineligible for adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1). 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.

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.