

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

Office: HOUSTON, TEXAS

Date: SEP 14 2005

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. 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The District Director denied the application because the applicant has been convicted of a criminal offense rendering her ineligible for adjustment to permanent resident status under the LIFE Act. *See District Director's Decision* dated March 4, 2004.

On appeal counsel submits a brief and the same documentation previously submitted in response to the Notice of Intent to Deny (NOID). In the brief counsel states that the applicant will seek relief pursuant to section 212(c) of the Act.¹ Counsel further states that the applicant has been residing in the United States since 1978 and she is the mother of three U.S. citizen children. Furthermore counsel states that if the applicant were removed from the United States it would be a great disruption for her children, one of which has a serious asthma problem. Finally counsel states that the applicant's conviction that the District Director bases the denial on occurred a long time ago and she has not been arrested or charged with any offense since her 1987 conviction.

Counsel argues that the applicant is entitled to seek relief under section 212(c) of the former Act. In support of this position, counsel cites *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (June 25, 2001). The *St. Cyr* decision is distinguishable from the case at hand in both the law and the facts. The Supreme Court decision specifically addressed the application of section 212(c) of the Act, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The current matter is based on an application for adjustment of status under 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), not a waiver of inadmissibility under IIRIRA. *St. Cyr* has no relevance in the current discussion.

An alien applying for adjustment of status under the LIFE Act must establish that she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Immigration and Nationality Act (the Act). 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 adjustment to permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1).

The regulation at 8 C.F.R. § 245a.1(p) states in pertinent part:

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. . .

¹ The AAO assumes that counsel is referring to section 212(c) of the former Immigration and Nationality Act (the former Act).

The record reveals that on October 23, 1987, in the District Court, 24th Judicial District, Victoria County, Texas, the applicant was convicted of the felony offense of theft in the 3rd degree and was sentenced to five years imprisonment.

The applicant's conviction of a felony offense renders her inadmissible and, therefore, statutorily ineligible for adjustment to permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1). Within the provisions of the LIFE Act, there is no waiver available to an alien convicted of a felony committed in the United States.

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