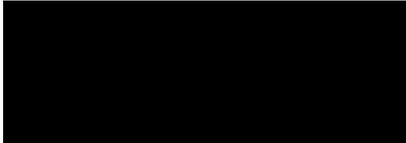


IDENTIFYING DATA DIVISION OF  
PROPERTY RIGHTS DIVISION  
DIVISION OF PERSONAL IDENTITY  
Public Identity

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



U.S. Citizenship  
and Immigration  
Services



L2

FILE:



Office: Los Angeles

Date: SEP 30 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: Self-represented

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 determined that the applicant had not established that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. In addition, the director determined 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. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, the applicant indicates that he has submitted sufficient documentation to establish continuous residence in this country for the requisite period. The applicant includes copies of previously submitted documents in support of his appeal.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. See *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on or about April 26, 1993. In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted employment letters, two affidavits of residence, a Form W-2, Wage and Tax Statement, and tax returns. The applicant subsequently submitted his Form I-485 LIFE Act application on August 15, 2001.

The record shows that the applicant appeared for the requisite interview relating to his LIFE Act application at the Service's Los Angeles, California District Office on April 18, 2002. The notes of the interviewing officer reflect that the applicant admitted that he been arrested and convicted of four separate offenses in December 1992 and July 1997. The record further shows that a Form I-72, Request for Additional Information, was issued to the applicant on this date, which requested that the applicant submit court dispositions and arrest records relating to his admitted criminal convictions. The applicant subsequently provided the requested court documents relating to his criminal convictions.

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:

- A violation of § 14601.1(a) of the California Vehicle Code, driving a vehicle with a suspended license on July 22, 1997;
- A violation of § 472 of the California Penal Code, forgery of an official seal on July 22, 1997; and,
- Another separate violation of § 14601.1(a) of the California Vehicle Code, driving a vehicle with a suspended license on July 22, 1997.

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.

As the applicant is ineligible to adjust to permanent residence status under the provisions of the LIFE Act as a result of his three misdemeanor convictions, the issue of his continuous residence in this country for the requisite period need not be examined in the current proceedings.

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.