U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date: APR 19 2006

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. 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.

Mary Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was initially denied and then reopened by the Director, National Benefits Center. The director subsequently denied the application again and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director initially determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (Act) because he had been convicted twice of offenses involving a controlled substance, specifically possession of marijuana. The director denied the application based upon the conclusion that a waiver of such a ground of inadmissibility was unavailable to the applicant as the exception set forth in section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 245a.2(k)(3)(ii), and 8 C.F.R. § 245a.18(c)(2)(ii) applied only for "...a single offense of simple possession of 30 grams or less of marijuana...."

On appeal from the initial denial, counsel asserted that the applicant remained eligible to adjust to permanent residence under the provisions of the LIFE Act because his two criminal convictions were both misdemeanor offenses.

The director subsequently withdrew the denial and reopened the case to issue a notice of intent to deny as such notice had not been issued prior to the initial denial as required under 8 C.F.R. § 245a.20(a)(2). On June 29, 2004, the director issued a Request for Additional Evidence to counsel in which the applicant was requested to provide certified court documents to establish the disposition of multiple charges that appear in the applicant's criminal record. In response, counsel submitted a letter from the Houston, Texas Police Department reflecting the disposition of the applicant's criminal charges. The record reflects that counsel was duly issued a notice of intent to deny on September 30, 2004.

The director determined that the applicant had not established that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000. The director further determined that the applicant was ineligible pursuant to 8 C.F.R. § 245a.18(a)(1), because he had been convicted of three misdemeanors in the United States. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and again denied the application.

The applicant and counsel were granted thirty days to submit additional material to supplement the appeal. However, as of the date of this decision, neither the applicant nor counsel has submitted any additional statement, brief, or evidence in support of the appeal. Therefore, the record shall be considered complete.

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) (*CSS*), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43

(1993) (*LULAC*), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). *See* 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." *See* 8 C.F.R. § 245a.14.

The first issue in this proceeding is whether the applicant had established that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000. The applicant neither claimed nor documented that he filed a written claim to class membership with his Form I-485 LIFE Act application. Rather, the record shows that the applicant included documents relating to his previous filing of a separate Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The applicant timely filed the Form I-687 legalization application on May 4, 1988, and this application was subsequently denied on November 1, 1989. The applicant's appeal to the denial of the Form I-687 legalization application was subsequently dismissed by the AAO on March 19, 1993. A timely filed Form I-687 legalization application does not constitute an application for class membership in any of the legalization class-action lawsuits. Furthermore, section 1104 of the LIFE Act contains no provision allowing for the reopening and reconsideration of a timely filed and previously denied application for temporary resident status under section 245A of the Act.

Given his failure to either claim or document that he filed a timely written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

The next issue to be examined is whether the applicant's multiple criminal convictions render him ineligible to adjust to permanent residence under the provisions of the LIFE Act.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible to adjust to permanent resident status under the provisions of the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(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).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The record contains court documents and two separate letters from the Houston, Texas Police Department that reflect the applicant has been convicted of the following criminal offenses:

- Misdemeanor Possession of Marijuana on April 30, 1976, which resulted in the applicant being sentenced to six days in the county jail.
- Misdemeanor Possession of Marijuana on July 7, 1987, which resulted in the applicant being sentenced to three days in the county jail and fined two hundred and fifty dollars.
- Misdemeanor Assault on July 13, 1992, which resulted in the applicant being sentenced to six days in the county jail.
- Misdemeanor Driving While Intoxicated on April 30, 1993, which resulted in the applicant being sentenced to twenty days in the county jail, fined one hundred dollars, and a suspension of his driver's license for one year.
- Misdemeanor Driving While License Suspended on May 6, 1994, which resulted in the applicant being sentenced to ten days in the county jail and fined one hundred dollars.

Clearly, counsel's assertion that the applicant had been convicted of only two misdemeanor offenses is erroneous as the evidence in the record establishes that the applicant has been convicted of five separate misdemeanor offenses. The applicant's five misdemeanor convictions render him ineligible to adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1).

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 Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden and is ineligible for permanent residence under section 1104 of the LIFE Act on this basis as well.

Beyond the director's most recent denial, the applicant's two misdemeanor convictions for marijuana possession render him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

An applicant for permanent resident status under the provisions of LIFE Act must establish that he or she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Act. Section 1140(c)(2)(D)(i) of the LIFE ACT.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act.

A waiver of grounds of inadmissibility is not available to an alien found to be inadmissible under specifically enumerated grounds of section 212(a) of the Act including section 212(a)(2)(A)(i)(II) of the Act. Section 245A(d)(2)(B)(ii) of the Act, 8 C.F.R. § 245a.2(k)(3)(ii), and 8 C.F.R. § 245a.18(c)(2)(ii).

The sole exception allowing for the waiver of the ground of inadmissibility for an alien found inadmissible under Section 212(a)(2)(A)(i)(II) of the Act as a result of a conviction involving a controlled substance is that available to an alien convicted of "...a single offense of simple possession of 30 grams or less of marijuana...." Section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 245a.2(k)(3)(ii), and 8 C.F.R. § 245a.18(c)(2)(ii).

As noted above, the applicant has two separate and distinct misdemeanor convictions for the possession of marijuana. Therefore, the exception contained at Section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 245a.2(k)(3)(ii), and 8 C.F.R. § 245a.18(c)(2)(ii) allowing for the waiver of the ground of inadmissibility for an alien convicted of a single offense of simple possession of 30 grams or less of marijuana is not available to the applicant.

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 and is also ineligible on this basis.

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