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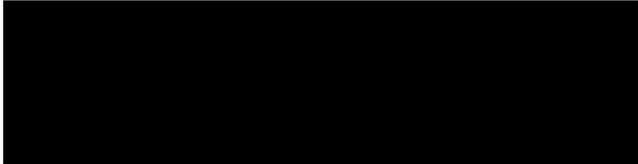
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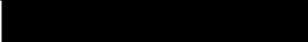
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FILE:



Office: LOS ANGELES

Date: **AUG 04 2006**

MSC 01 324 60539

IN RE:



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. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
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 on appeal. The appeal will be dismissed.

The district director determined that the applicant had been convicted of three or more misdemeanors and therefore, pursuant to 8 C.F.R. § 245a.18(a), was inadmissible to the United States. Accordingly, the director denied the application for adjustment of status as a permanent resident.

The applicant's criminal record history reveals, in part, the following:

- A September 2, 1992 conviction for one count of willful discharge of a firearm (PC 246.3) and one count of child endangerment (PC 273a(1)). The applicant received a sentence of 12 months probation and was subject to search and seizure. Case # [REDACTED]
- A May 1, 1996 conviction for two counts of driving under the influence (DUI) of alcohol. DUI VC 23152(a) and DUI .08% VC 23152(b). The applicant was placed on three years probation and ordered to pay a fine, serve 5 days in jail and complete an alcohol referral program. The applicant failed to complete the alcohol referral program and was subsequently ordered to serve an additional 30 days in jail. Case # [REDACTED]
- A June 25, 1999 conviction for urinating in public. Santa Ana Municipal Code 10-34. The applicant was fined \$25 and ordered to pay restitution of \$100. Case # [REDACTED]

The record, therefore, reflects that the applicant was convicted of five misdemeanors. The regulation at 8 C.F.R. § 245a.18 provides:

(a) *Ineligible aliens.* (1) An alien who has been convicted of a felony or of three or [more] misdemeanors committed in the United States is ineligible for adjustment to LPR status under this Subpart B.

On appeal, counsel asserts that the director erroneously counted the applicant's 1996 arrest and conviction twice. However, the record reflects that the applicant was convicted of two counts of DUI on May 1, 1996. Pursuant to section 212(a)(2)(B), each count is considered a conviction of a separate offense. Thus, the director properly counted two offenses for the May 1996 conviction.

Counsel also asserts that the applicant's 1992 conviction is not a conviction of a misdemeanor pursuant to 8 C.F.R. § 245a.1(o) as the sentence imposed on the applicant "included only a fine of \$100." Counsel quotes 8 C.F.R. § 245a.1(o) as providing that "For five days or less shall not be considered a misdemeanor." However, an accurate and complete reading of 8 C.F.R. § 245a.1(o) reflects the following:

*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. § 245.1(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.

The applicant's conviction of urinating in public resulted from a charge of violating section 10-34 of the Santa Ana Municipal Code, which section 10-21 defines as a misdemeanor. Pursuant to the California

Penal Code, a violation of a misdemeanor under a municipal code carries the same maximum penalty as that provided under state law.<sup>1</sup> A misdemeanor under California law is punishable by imprisonment in the county jail for not more than six months and/or a fine not to exceed \$1,000.<sup>2</sup> As the applicant was convicted of a misdemeanor that is punishable by more than five days, the conviction is a conviction of a misdemeanor under section 8 C.F.R. § 245a.1(o).

We note that in response to the NOID, counsel stated that the applicant had filed for expungements of his convictions, and that expungements “provide[] relief for aliens facing adverse immigration consequences as a result of criminal convictions. After obtaining the expungements, [the applicant] would not be barred from adjusting his status.” Although counsel does not pursue this argument on appeal, the applicant submitted evidence that his 1992, 1999 and one count of his 1996 convictions had been expunged pursuant to state law. However, for immigration purposes, these convictions are still convictions. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. 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*, 22 I&N Dec. 512 (BIA 1999).

Therefore, as the applicant has been convicted of five misdemeanors, he is inadmissible to the United States and is ineligible for permanent resident status under section 1104 of the LIFE Act.

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

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<sup>1</sup> See West’s Ann. Cal. Gov. Code § 25132.

<sup>2</sup> See West’s Ann. Cal. Penal Code §§ 17 and 19.