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U.S. Citizenship
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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

DEC 01 2006

MSC 02 015 61667

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 concluded that the applicant had been convicted of at eight misdemeanors in the United States, and accordingly, denied the application.

On appeal, counsel asserts that the director ignored the certified court documents submitted in response to the Notice of Intent to Deny, which reveals that the applicant has only two misdemeanor convictions.

The regulation at 8 C.F.R. § 245a.18(a)(1) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status.

"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 the term "felony," pursuant to 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).

Along with his LIFE application, the applicant provided an expungement order for case no. [REDACTED] dated August 10, 2001, which revealed that the applicant had been convicted of violating sections 23152(a) and 23152(b) of the California Vehicle Code. The applicant also provided an expungement order for case no. [REDACTED] dated August 10, 2001, which revealed that the applicant had been convicted of violating sections 23152(a), 23152(b) and 12500(a) of the California Vehicle Code.

On August 7, 2003, the director issued a Form I-72, which requested the final court certified dispositions for his arrest in 1988. The applicant, in response, submitted copies of expungement petitions for case nos. [REDACTED] and [REDACTED] along with their respective court dispositions which revealed the following.

1. On or about February 19, 1989, the applicant was arrested in Los Angeles County and subsequently charged on February 24, 1989 with driving under the influence, a violation of section 23152(a) VC; driving with .08 of more alcohol in the blood, a violation of section 23152(b) VC; and no proof of car insurance, a violation of section 16028(a) VC. [REDACTED]

On appeal, counsel asserts that page one of the court disposition reflects that on July 6, 1989, the applicant's proceedings were terminated and the calendar was canceled. Counsel asserts there is no indication from the court documents that any of the charges resulted in a conviction.

Although the court disposition fails to indicate a conviction date, it does indicate that on May 26, 1989, the case was called for fine payment(s), and "the defendant failed to make installment payment as ordered by court." As the court issued some form of punishment above, it is concluded that the applicant has been convicted of at least one of the charges for immigration purposes. In filing an expungement petition, an individual is requesting the withdrawal of his plea of guilty or that the verdict or finding of guilt be set aside. In the instant case, the court found the applicant eligible for the relief and granted said petition. If no conviction(s) occurred why an expungement petition was filed and subsequently granted by the court?

2. On or about March 23, 1989, the applicant was arrested in Los Angeles County and subsequently charged on March 29, 1989 with driving under the influence, a violation of section 23152(a) VC; driving with .08 percent of more alcohol in the blood, a violation of section 23152(b) VC; and driving without a license, a violation of section 12500(a). On July 6, 1989, the applicant was convicted of driving with .08 percent or more alcohol in the blood, a misdemeanor. The applicant was placed on probation for three years. The remaining offenses were dismissed. Case no. [REDACTED]

The applicant also submitted court documents which revealed the following:

3. On or about December 26, 1987, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC and driving with .08 percent of more alcohol in the blood, a violation of section 23152(b) VC. On February 5, 1988, the applicant was convicted of driving with .08 percent or more alcohol in the blood, a misdemeanor. The applicant was placed on probation for three years and ordered to pay a fine. The remaining offense was dismissed. On August 10, 2001, the conviction was expunged in accordance with section 1203.4 PC. [REDACTED]

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, 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).

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals (BIA) found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. The BIA reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains "convicted" for immigration purposes.

Although these precedent decisions were finalized after the applicant applied for permanent residence, it is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all Citizenship and Immigration Services offices.

Therefore, pursuant to the above precedent decisions, no effect is to be given to the applicant's expungements.

The director, in denying the application, concluded that the applicant had been convicted of eight misdemeanors. However, the court documents for number one above reflect that the applicant was charged with an infraction for violating section 27315(d) VC, driving without a seatbelt. Likewise, the court documents for number two above reflect that the applicant was charged with an infraction for violating section 16028(a), no proof of car insurance.

The applicant has been convicted of at least three misdemeanors and, therefore, is ineligible for the benefit being sought. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). Accordingly, the applicant 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.