

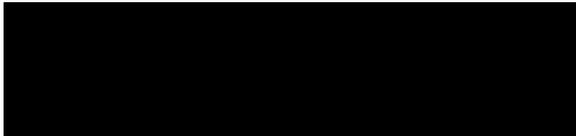
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC 02 010 62384

Office: LOS ANGELES

Date: **DEC 15 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:



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 Director, Los Angeles, California, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director determined that the applicant's deportation during the required period interrupted his continuous residency. 8 C.F.R. § 245a.15(c)(3). The district director further 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.

On appeal, counsel states that the applicant maintains that he is still eligible for benefits under the LIFE Act because his departure under his order of deportation was for less than 45 days and that he is in the process of obtaining a reduction of his misdemeanor convictions to infractions. Counsel timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, in which she stated that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. However, as of the date of this decision, more than 23 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;
- (2) The alien was maintaining residence in the United States; and
- (3) The alien's departure from the United States was not based on an order of deportation.

The record reflects that on April 19, 1984, the applicant was ordered deported by an immigration judge and a warrant of deportation was issued on the same date. The record also reflects that the applicant was deported to Mexico on April 20, 1984.

In response to the director's Notice of Intent to Deny, issued on January 9, 2004, and again on appeal, counsel does not contest that the applicant was removed from the United States pursuant to an order of deportation. Counsel, nonetheless, asserts that the applicant's absence from the United States was for less than 45 days, and that therefore, he remains eligible for benefits under the LIFE Act pursuant to 8 C.F.R. § 245a.15(c)(1). Counsel's argument is without merit, as he reads the provisions of 8 C.F.R. § 245a.15(c) disjunctively rather

than conjunctively. The regulation requires the applicant to establish that he was out of the United States for less than 45 days **and** that he was not absent from the United States pursuant to an order of deportation.

The applicant's departure from the United States in April 1984 during the qualifying period interrupted his continued residency in the United States.

The director further determined that the applicant was inadmissible to the United States as he has been convicted of three or more misdemeanors.

The applicant's criminal record reveals the following:

- A December 20, 1978 conviction for drunk driving in violation of the California Vehicle Code 23102(a), and driving without a license in violation of the California Vehicle Code 12500(a). The applicant was sentenced to 30 days in jail, which was suspended, probation for 12 months and a fine and penalty totaling \$1,200.
- A March 8, 1984 conviction for theft in violation of California Penal Code 484(a). The applicant was sentenced to 15 days in jail and placed on probation for 36 months.
- A June 29, 1989 conviction for driving under the influence of alcohol in violation of California Vehicle Code 23152(b). The applicant received a suspended sentence of 180 days in jail for a period of 36 months subject to his serving 144 hours in the county jail, a fine of \$393 and a penalty of \$526.50 or, in the alternative, 13 days in jail.¹ ([REDACTED])

The record, therefore, reflects that the applicant was convicted of four 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 applicant's conviction for driving without a license could also be charged as an infraction, and that the applicant was in the process of obtaining a reduction of that charge. However, the applicant failed to submit any evidence that the court reduced the charge to an infraction. Further, even if the charge was reduced to an infraction, the applicant would still stand convicted of three misdemeanors and would remain inadmissible into the United States pursuant to 8 C.F.R. § 245a.18.

Therefore, as the applicant has been convicted of four 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.

¹ This conviction was not addressed in the director's decision.