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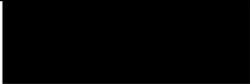
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

APR 03 2007

MSC 02 113 62925

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:



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 and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had been convicted of four misdemeanors in the United States, and accordingly, denied the application. The district director also denied the application because the applicant's testimony was at variance with the information initially provided on his Form for Determination of Class Membership.

On appeal, the applicant argues that he had submitted "overwhelming proof" that he was only convicted of two misdemeanors. The applicant reiterates that he did not apply for amnesty because he departed the United States in 1987.

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. 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).

On December 21, 2004, the director issued a Notice of Intent to Deny, advising the applicant of the following:

[O]n 1/26/87, you stated under oath that you did not apply for amnesty because you did not have any money. On January 26, 1995, you again stated under oath that you did not apply prior to May 4, 1988 because you had no money at that time. However, in Form for Determination of Class Membership, signed and dated 5/16/91, Item #10, you indicated that when "I tried to apply my priest of church told that I was not able to apply due went to Mexico in 1987, I checked this in Pomona INS and they told me same."

The director determined that the applicant's contradictory declarations appeared "to brush aside the believability of your claim and raise serious questions regarding its credibility."

The applicant, in response, asserted that he was confused by the question and was embarrassed to state the real reason that he had to go to Mexico in 1987 was for an emergency. The applicant, on appeal, revises his statement and asserts that he denies ever saying he did not apply for amnesty because he had no money. However, a review of the interviewing officer's notes on January 26, 1995 and the applicant's signed statement, written in the Spanish language, disputes the applicant's assertion.

Even though the applicant had offered contradicting testimony regarding whether he was front-desked, the contemporaneous documentation in the record supports the applicant's claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Nevertheless, 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).

On September 23, 2004, the director issued a Form I-72, requesting that the applicant submit the court dispositions for all arrests. The applicant, in response, submitted court documentation which reflected the following in the state of California:

1. On [REDACTED] the applicant was arrested for driving under the influence, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; and driving without a license, a violation of section 12500(a), VC, all misdemeanors. On [REDACTED] he applicant pled guilty to all counts. Case no. [REDACTED]
2. On May 31, 2004, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC and driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, both misdemeanors. On August 6, 2004, the applicant was convicted of driving under the influence. The remaining charge was dismissed. Case no. [REDACTED]

The applicant's claim that he has only two misdemeanor convictions has no merit as the court dispositions clearly reflect that he was convicted of four misdemeanors.

The applicant is ineligible for the benefit being sought due to his four misdemeanor convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). Therefore, 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.