

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY



FILE: [REDACTED] Office: LOS ANGELES Date: DEC 11 2007
MSC 02 208 60993

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. 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.

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, and is now before the Administrative Appeals Office on appeal. The AAO will dismiss the appeal.

The district director denied the application based on the conclusion that the applicant was statutorily ineligible because he had three or more misdemeanor convictions. On appeal, counsel for the applicant contends that contrary to the director's findings, the applicant was convicted of only two misdemeanor offenses and, therefore, is statutorily eligible for the benefit sought.

The regulation at 8 C.F.R. § 254a.2(c)(1) defines ineligible aliens, in part, as "an alien who has been convicted of a felony or three or more misdemeanors."

In this matter, the record reflects that the applicant was arrested on two occasions. On or about May 29, 1999, the applicant was arrested by the Los Angeles County Police Department, and was charged with the following offenses on June 2, 1999:

Count 01:	11350(A)	H&S	FEL	POSS NARCOTIC CONTROL SUBSTANC.
Count 02:	23152(A)	VC	MISD	UND INFLNCE ALCHL/DRUG IN VEH.
Count 03:	23152(B)	VC	MISD	.08% MORE WGHT ALCHL DRIVE VEH.

On June 23, 1999, the applicant was convicted of Count 03, and a motion to dismiss Count 02 was filed. With regard to Count 01, the applicant entered a plea of guilty, and was placed on deferred entry of judgment with regard to this charge for 18 months. At the conclusion of this 18 month period, the Superior Court of Los Angeles set aside the deferred judgment as to Count 01 and terminated the proceedings on December 22, 2000. Count 02 was dismissed by the Court on the same day.

It is not disputed that the applicant was again arrested on or about November 22, 2001 by the Los Angeles County Police Department, and was charged with the following offenses on January 2, 2002:

Count 01:	23152(A)	VC	MISD	UND INFLNCE ALCHL/DRUG IN VEH.
Count 02:	23152(B)	VC	MISD	.08% MORE WGHT ALCHL DRIVE VEH.

On February 8, 2002, the applicant was convicted of Count 02, and Count 01 was dismissed (Case No. 2 CM0044).

Based on the evidence provided, the applicant was convicted of the following two misdemeanors, not four as the director erroneously concluded:

June 23, 1999:	Count 03 (23152(B) VC MISD)
February 8, 2002:	Count 02 (23152(B) VC MISD)

In addition, and contrary to the assertions of counsel and the findings of the director, the applicant has also been convicted of a felony, which renders him statutorily ineligible under 8 C.F.R. § 254a.2(c)(1). Specifically, the applicant entered a guilty plea on June 23, 1999 to the following felony charge:

Count 01:	11350(A)	H&S	FEL	POSS NARCOTIC CONTROL SUBSTANC.
-----------	----------	-----	-----	---------------------------------

While counsel asserts that the deferred judgment in this matter was set aside on December 22, 2000 and thus is not a conviction. The AAO likewise notes that successfully completed California Drug Diversions (PC 1000), where the case was filed *before January 1, 1997*, are not convictions under section 101(a)(48) of the Immigration and Nationality Act because a guilty plea was never entered. The applicant's situation in this matter, however, is distinguishable for two reasons, since (1) the case was filed on June 2, 1999, and (2) the applicant did in fact enter a guilty plea. As correctly stated by the director, 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 by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Therefore, while it does appear that the applicant only has two misdemeanor convictions, he was also convicted of a felony for purposes of this analysis. For this reason, the application must be denied.

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