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[REDACTED]

FILE: [REDACTED]
MSC 01 313 60664

Office: LOS ANGELES

Date: JAN 19 2007

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, of if the matter 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.

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 (AAO) on appeal. The AAO remands the case for further action and consideration.

The director denied the application, finding the applicant had been convicted of four misdemeanors and was therefore ineligible for adjustment to permanent resident status pursuant to section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. 245a.18(a)(1).

On appeal, counsel contends, and submits court documents in support of the contention, that the applicant has only been convicted of two misdemeanors.

The regulation at 8 C.F.R. § 245a.18(a)(1) provides that 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 permanent resident status.

The director denied the application on the basis of the following four misdemeanor convictions:

- California Vehicle Code (VC) § 21456(b) (Walk, Wait, or Don't Walk) on June 27, 1983.
- VC § 23152(a) (Driving Under Influence of Alcohol or Drugs) on October 18, 1983.
- VC § 23152(a) (Driving Under Influence of Alcohol or Drugs) on March 8, 1985
- VC § 40508(a) (Failure of Promise to Appear or Pay Fine) and § 12500(a) (Driving Without a License) on February 3, 1987

On appeal, counsel contends, and submits court records in support of the contention, that the applicant has only been convicted of two misdemeanors, the convictions of October 18, 1983 and March 8, 1985.

The regulation at 8 C.F.R. § 245a.1(o)(1) defines a misdemeanor as a crime “punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served.” The regulation at 8 C.F.R. § 245a.1(p) also defines as a misdemeanor a crime “punishable by imprisonment for a term of more than one year when the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served.”

Documents in the record from the California Department of Motor Vehicles (DMV) show that the applicant was convicted of violating section 21456(b) of the California Vehicle Code on June 27, 1983. However, violation of this section is an “infraction” for which the maximum penalty for the first offense is “a fine not exceeding one hundred dollars (\$100).” *See* VC §§ 40000.1, 42001(a)(1). There is no evidence in the record of the punishment imposed, if any, for the applicant’s violation of this section. A conviction for this offense does not constitute a misdemeanor conviction within the meaning of the regulations. Accordingly, the AAO withdraws the director’s finding that the applicant’s conviction for violation of section § 21456 of the California Vehicle Code was a misdemeanor conviction.

Also, although the record does indicate that the applicant was charged with violation of sections 40508(a) and 12500(a) of the California Vehicle Code, misdemeanor offenses under California law, it does not indicate that the applicant was convicted of violating these sections on February 3, 1987. Instead, the DMV documents in the record indicate that the applicant allegedly committed these and other offenses on February 3, 1987. The records do not indicate any final disposition of these charges.

The record shows that the applicant has two misdemeanor convictions. It also shows that the applicant was charged with other misdemeanor offenses, but there is no evidence in the record showing that the applicant was convicted of these offenses. In the absence of such evidence, the director's finding that the applicant has been convicted of three or more misdemeanors must be withdrawn.

Neither the NOID nor the director's decision contains sufficient analysis of the other eligibility criteria to determine if the applicant is eligible for permanent resident status under the LIFE Act. Accordingly, the matter will be remanded for entry of a new decision. If the director determines that the application should be denied, the director shall issue a Notice of Intent to Deny containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice. If, following this period, the director's final decision is adverse to the applicant, it shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the foregoing. If this decision is adverse to the applicant, it shall be certified to the AAO for review.