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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 089 60178

Office: LOS ANGELES

Date:

NOV 01 2007

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

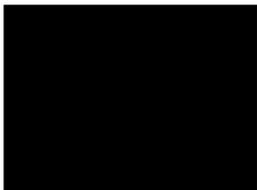
**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

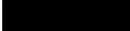
The district director denied the application, finding that the applicant was not an eligible alien, as defined by 8 C.F.R. §254a.10, in that he had been convicted of three or more misdemeanors.

On appeal, the applicant urges reconsideration and submits copies of expungement orders for three of his four misdemeanor convictions in the State of California.

The regulations at 8 C.F.R. § 245a.10(d)(1) provides in pertinent part that an eligible alien may adjust to legal permanent resident status under LIFE legalization if he or she "has not been convicted of any felony or of three or more misdemeanors committed in the United States."

The record contains evidence that the applicant was convicted of four misdemeanor offenses in the State of California from January 1983 through May 1989:

<u>Conviction Date</u>	<u>Section Violation</u>	<u>Docket Number</u>
01/05/1983:	23152 (B) VC	
05/06/1988:	23152 (B) VC	
12/17/1988:	23152 (A) VC	
05/01/1989:	484 (A) PC	

Three convictions were for Driving Under the Influence of Alcohol, and the fourth was for Theft of Property. In support of his claimed eligibility, the applicant submitted copies of three orders of expungement issued by the Superior Court of Los Angeles on April 22, 2003 for the convictions on May 6, 1988 (Case No. ) December 17, 1988 (Case No. ) and May 1, 1989 (Case No. ) The applicant claims that these expungements overcome the basis for the denial of the application, since they permit him to withdraw his guilty plea and/or set aside the verdict or finding of guilt, and thus render him eligible for the benefit sought. The AAO disagrees.

In applying the definition of a conviction under section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A) 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. Thus, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. If, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains "convicted" for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *see also Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). In this case, there is no allegation or evidence that there were any legal defects in the underlying criminal proceedings.

Since the applicant has been convicted of a total of four misdemeanors, 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.