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U.S. Citizenship
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FILE:  Office: LOS ANGELES Date: **NOV 16 2007**
MSC 02 176 64158

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

The district director concluded that the applicant had been convicted of at least three misdemeanors in the United States, and accordingly, denied the application.

On appeal, the applicant submits expungement orders for his convictions.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

“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 actually served, if any; or (2) a crime treated as a misdemeanor under 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).

The record reflects the following applicant’s criminal history in the state of California:

1. On May 23, 1993, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC; driving while having .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; and driving without a license, a violation of 12500(a) VC, all misdemeanors. On June 17, 1993, the applicant was convicted of violating sections 23152(a) VC and 12500(a) VC. On October 21, 2005, the convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
2. On June 24, 1996, the applicant was arrested for driving without a license, a violation of section 12500(a) VC, a misdemeanor. On July 30, 1996, the applicant was convicted of this offense. On October 21, 2005, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 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. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The Board of Immigration Appeals (BIA) revisited the issue in *Matter of Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002) and concluded that Congress did not intend to provide any exceptions from its statutory definition of a conviction for expungement proceedings pursuant to state rehabilitative proceedings.

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the 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. The BIA reiterated that if a court vacates a conviction for

reasons unrelated to the merits of the underlying criminal proceedings, the alien remains “convicted” for immigration purposes.

Despite the expungements of the applicant's convictions, the applicant remains convicted, for immigration purposes, of the three misdemeanors above.

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