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U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES

Date:

APR 01 2008

MSC 02 245 61305

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. 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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because he had been convicted of three misdemeanors in the United States. The director also denied the application because the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States in an unlawful status from that date through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). On appeal, the applicant submits a letter and additional documentation.

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 Lawful Permanent Resident status. *See* 8 C.F.R. § 245a.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 such alien 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. *See* 8 C.F.R. § 245a.1(o).

The record contains court documents reflecting that the applicant was convicted of the following misdemeanor offenses: (1) on August 16, 2000, in Alhambra, California, of driving with a suspended or revoked license in violation of section 14601.5(A) of the California Vehicle Code; (2) on November 10, 1992, in Pasadena, California, of driving under the influence of alcohol/drug in vehicle in violation of section 23152(A) of the California Vehicle Code; and, (3) on July 21, 1998, in Monrovia, California, of driving under the influence of alcohol/drug in vehicle in violation of section 23152(A) of the California Vehicle Code.

On appeal, the applicant states that one of his convictions has been dismissed and that he soon expects to have the other two dismissed. In support of the appeal, the applicant submits a document from the Municipal Court of California, County of Los Angeles, indicating that on February 8, 2006, his conviction as noted in No. 2, above, was dismissed pursuant to section 1203.4 of the California Penal Code. He also submits documents from the Superior Court of the State of California, County of Los Angeles, indicating that he has submitted requests pursuant to section 1203.4 to have his convictions noted in Nos. 1 and 3 discharged or dismissed.

However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are

of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

Because of his three misdemeanor convictions, the applicant is ineligible for permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1). Within the provisions of the LIFE Act, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

Furthermore, the applicant has failed to submit sufficient documentation to establish his continuous unlawful residence in the United States during the requisite time period. The only documentation contained in the record to establish the applicant's presence in the United States during the requisite period consists of affidavits from acquaintances that provide little detail about the basis of the affiants' recollections, or the nature and extent of their interaction with the applicant from 1982 through 1988. The absence of detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence for the requisite time period detracts from the credibility of his claim. In accordance with 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. Given the applicant's reliance upon minimal documentation with little probative value, he has failed to establish his continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. Here, the applicant has failed to meet this burden.

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