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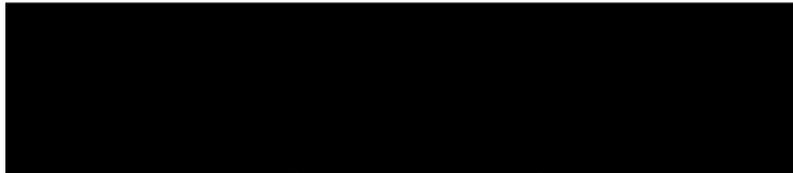
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-02-243-69209

Office: LOS ANGELES

Date: AUG 25 2008

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:



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 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.

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 appeal will be summarily 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 a felony and at least one misdemeanor in the United States. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

On appeal, counsel submits a timely Form I-290B, Notice of Appeal and three court dispositions. On the Form I-290B, counsel stated that on June 30, 2006 the "Superior Court of California issued an order pursuant to PC 1000.3 dismissing the charge of violating 11377(A) H & S." Counsel also stated that the applicant "has not been convicted of a felony and therefore, remains eligible for adjustment of status pursuant to the LIFE Act." As of this date, the AAO has not received any additional evidence from counsel or the applicant. Therefore, the record is complete.

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. 8 C.F.R. § 245a.18(a)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except 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. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"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. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record of proceeding contains the following court dispositions for arrests:

- The record reflects that on July 8, 2001, the applicant was arrested by the Los Angeles Police Department. On August 30, 2001, the applicant pled *nolo contendere* to a violation of section 23103 VC. The Superior Court of California County of Los Angeles found the applicant guilty and he was placed on a summary probation. (Case No. [REDACTED])
- The record reflects that on December 8, 2001, the applicant was arrested by the Los Angeles Police Department. On February 6, 2002, the applicant pled *nolo contendere* to a violation of section 14601.5(A) VC. The Superior Court of California County of Los Angeles found the applicant guilty and he was placed on a summary probation. (Case No. [REDACTED])
- The record reflects that on November 30, 2004, the applicant was arrested by the Los Angeles Police Department. On December 30, 2004, the applicant pled guilty to a violation of section 11377(A) H&S felony – possession of a controlled substance. The Superior Court of California County of Los Angeles deferred judgment. On March 1, 2005, the applicant did not appear in court and the Superior Court of California County of Los Angeles convicted him of the charge and issued a bench warrant in the amount of \$100,000. On March 18, 2005, the applicant appeared in court in the Superior Court of California County of Los Angeles and the court reinstated the deferred entry of judgment. On June 30, 2006, the Superior Court of California County of Los Angeles set aside/discharged the plea under 1000.3 PC. (Case No. [REDACTED])

The AAO finds that the applicant is ineligible for the benefits sought, because of his three misdemeanor convictions.¹ The record of proceeding contains the applicant's court disposition from the Superior Court of the State of California County of Los Angeles. The record reflects that on December 30, 2004, the applicant pled guilty to a possession of a controlled substance and on March 18, 2005, the Court of the State of California County of Los Angeles convicted him. Despite the Court of the State of California County of Los Angeles setting aside/discharging the applicant's guilty plea, under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, 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).

In addition, the AAO notes that although the applicant has submitted court dispositions for three arrests, the record indicates that the applicant was also arrested on March 15, 2005 by the Los Angeles Police Department and charged with one count of possession of a controlled substance. The California Health and Safety Code Section 11350 states that

¹ The possession conviction carried a maximum sentence of one year or less and thus is considered a misdemeanor under the LIFE Act.

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

Regardless of the three misdemeanor convictions, as the applicant failed to submit a court disposition of the March 15, 2005 arrest, he has not established that he is eligible for adjustment of status to permanent resident. The applicant has not proved that he has not been convicted of one felony or three misdemeanors.

The AAO notes further that the applicant is inadmissible to the United States, and is thus ineligible to adjust his status to permanent resident, as he was convicted of possession of a controlled substance. Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(A)(i)(II). 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).

Pursuant to 8 C.F.R. § 245a.2(c), one felony conviction or three misdemeanor convictions would render the applicant ineligible for adjustment to permanent resident status. The applicant has three misdemeanor convictions and is inadmissible. The applicant's misdemeanor convictions renders the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c). Accordingly, the appeal must be summarily dismissed.

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