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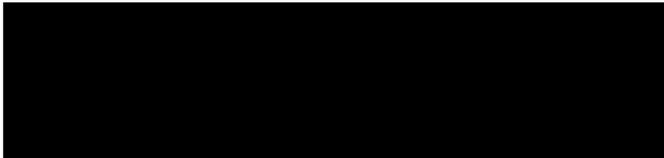
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC-02-229-60604

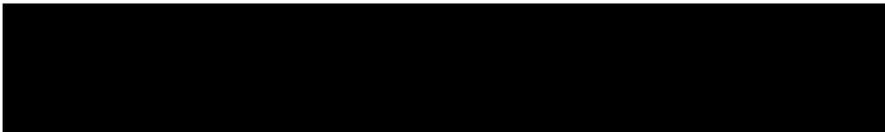
Office: LOS ANGELES

Date: FEB 13 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application for the reasons specified in the Notice of Intent to Deny (NOID). In the NOID, the director found that the applicant had been convicted of three misdemeanors and, therefore, was not eligible for permanent resident status under the LIFE Act.

On appeal, the applicant stated that the director erred and the alleged convictions do not constitute misdemeanor convictions under the Immigration and Nationality Act (Act). The applicant also indicated he would submit a brief or additional evidence within 30 days of submitting his Form I-290B appeal on July 15, 2005. However, the applicant failed to submit additional information. More than two years have passed since the applicant submitted his appeal. Therefore, the record will be considered complete.

To be eligible for permanent resident status under the LIFE Act, an individual must not have been convicted of any felony or of three or more misdemeanors committed in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act, Pub. L. 106-553, 114 Stat. 2762 (Dec. 21, 2000); 8 C.F.R. § 245a.11(d)(1).

According to 8 C.F.R. § 245a.12(e), an applicant for adjustment of status under the LIFE Act has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status under 8 C.F.R. § 245a.12(b).

In the NOID dated March 23, 2005, the director explained that court records indicated that the applicant was convicted of the following misdemeanors:

1. VC Misd. 23152(B) on September 16, 1993, Municipal Court of Los Angeles, County of Los Angeles¹;
2. VC Misd. 23152(B) on June 6, 1995, Municipal Court of Los Angeles, County of Los Angeles²;

¹ On September 16, 1993, the applicant pled *nolo contendere* and was convicted of the misdemeanor of driving a vehicle with alcohol weight of more than .08% in violation of section 23152(B) of the California Vehicle Code (Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, Docket No. [REDACTED]). The court suspended disposition of sentence and placed the applicant on summary probation for 60 months, under the condition of serving 96 hours in the Los Angeles County Jail, less credit for 24 hours, and paying a fine of \$390.00, plus other fees, or serving 13 days in the Los Angeles County Jail.

² On June 6, 1995, the applicant pled *nolo contendere* and was convicted of the misdemeanor of driving a vehicle with alcohol weight of more than .08% in violation of section 23152(B) of the California Vehicle Code (Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, Docket No. [REDACTED]). The

3. VC Misd. 14601.2(A) on June 6, 1995, Municipal Court of Los Angeles, County of Los Angeles³; and
4. PC Misd. 647(F) on August 8, 2002, Superior Court of California, County of Los Angeles⁴.

The director also explained the same court records indicated the applicant had admitted to being convicted of violating VC Misd. 23152(B) on or about March 31, 1988⁵.

In his response to the NOID, counsel for the applicant indicated that the applicant conceded to the convictions for VC Misd. 23152(B) on September 16, 1993 and on June 6, 1995. However, counsel also asserted that the remaining three above listed convictions do not constitute misdemeanor convictions according to the LIFE Act. Specifically, counsel stated that the August 8, 2002 conviction for violating California Penal Code section 647(F) does not constitute a misdemeanor as defined by the LIFE Act because maximum punishment for that crime is being held in civil protective custody for a maximum of three days; that the applicant's violation of Vehicle Code section 14601.2(A) does not constitute an additional misdemeanor because that incident refers to a probation violation which stemmed from an earlier misdemeanor conviction; and the government cannot establish a 1988 conviction for violation of Vehicle Code section 23152(B) because the Superior Court of California does not have any records to establish a conviction as defined by the Act.

court suspended disposition of sentence and placed the applicant on summary probation for 60 months, under the condition of serving 30 days in the Los Angeles County Jail, less credit for one day, and paying a fine of \$450.00, plus other fees, or serving 15 days in 30 days consecutive to any term.

³ On June 6, 1995, the applicant pled *nolo contendere* and was convicted of the misdemeanor of driving with a suspended license in violation of section 14601.2(A) of the California Vehicle Code (Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, Docket No. [REDACTED]). The court suspended disposition of sentence until such time as the sentence on count two (the violation of section 23152(B)) is completed and becomes final.

⁴ The director mistakenly listed the date of this conviction as June 5, 2002. On August 8, 2002, the applicant pled *nolo contendere* and was convicted of the misdemeanor of public intoxication: drugs/alcohol in violation of section 647(F) of the California Penal Code (Superior Court, County of Los Angeles, Docket No. [REDACTED]). The court suspended disposition of sentence and placed the defendant on summary probation for 36 months under the condition of payment of attorney fees; performing 20 days of community service; paying a restitution fine; serving 30 days in county jail or 20 days graffiti removal, credit 2 days; completing a one year domestic violence counseling program; and attending 156 alcoholics anonymous meetings.

⁵ On September 16, 1993, the applicant admitted a prior conviction of the misdemeanor of driving a vehicle with alcohol weight of more than .08% in violation of California Vehicle Code section 23152(B) (Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, Docket No. [REDACTED]).

The issue in this proceeding is whether the applicant has established that he is eligible for permanent resident status under the LIFE Act. Specifically, it must be determined whether the applicant has established that he is not ineligible for permanent resident status under the LIFE Act due to having been convicted of three misdemeanors. As stated above, counsel indicated the applicant has admitted to being convicted of two of the misdemeanors identified by the director. The remaining question for determination is whether the applicant has established that he was not convicted of a third misdemeanor and is, therefore, not ineligible for permanent resident status based on three misdemeanor convictions.

The record indicates the applicant provided a certified copy of a court docket of the Superior Court of Los Angeles County dated April 18, 2002. The docket indicates that on June 6, 1995, the applicant was convicted of a misdemeanor violation of Vehicle Code section 14601.2(A) Driving with a Suspended License. On appeal, counsel asserted that this violation does not constitute a misdemeanor because, "that incident refers to a probation violation which stemmed from a misdemeanor conviction of September 16, 1993 for violation of California Vehicle Code section 23152 (B)."

Counsel stated that the section 14601.2(A) violation, "reverts to a probation violation hearing for the September 16, 1993 case with a case number of [REDACTED]" Counsel has provided no evidence of his claim that the section 14601.2(A) violation reverts to a probation violation hearing. The only apparent relationship between the current conviction on June 6, 1995 and the case number provided by counsel is that in the proceedings relating to the June 6, 1995 conviction, the applicant admitted to the earlier conviction on September 16, 1993 that had a case number of [REDACTED]. There is no evidence, in the court docket or elsewhere in the record, which indicates the misdemeanor conviction on June 6, 1995 for violating section 14601.2(A) was not, in fact, a misdemeanor conviction.

The docket record of the proceedings relating to the June 6, 1995 convictions actually indicates that the judge stayed the sentence for the violation of section 14601.2(A) until the completion and finality of the sentence on the other count for which the applicant was convicted on the same day. However, despite this stay of sentence, the record still indicates the applicant was convicted of two misdemeanors on June 6, 1995, including the violation of section 14601.2(A).

Counsel seems to suggest the violation of section 14601.2(A) also constituted a violation of the applicant's probation related to the September 16, 1993 conviction. However, the violation of section 14601.2(A) was listed as a misdemeanor conviction on June 6, 1995, rather than a probation violation, in the docket. Therefore, the applicant is found to have been convicted of a misdemeanor violation of section 14601.2(A) on June 6, 1995.

As stated above, to be eligible for permanent resident status under the LIFE Act, and individual must not have been convicted of any felony or of three or more misdemeanors committed in the United States. 1104(c)(2)(D)(ii) of the LIFE Act, Pub. L. 106-553, 114 Stat. 2762 (Dec. 21, 2000); 8 C.F.R. § 245a.11(d)(1). According to counsel, the applicant has admitted to being convicted of two additional misdemeanors, including convictions on September 16, 1993 and June 6, 1995 for violating Vehicle Code section 23152(B). These convictions are evidenced by the certified copy of

the court docket provided by the applicant. The applicant has also been determined to have been convicted of a misdemeanor violation of section 14601.2(A) on June 6, 1995. As a result, the applicant has been found to have been convicted of three misdemeanors. The applicant is, therefore, ineligible for permanent resident status under section 245A of the Act on this basis.

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