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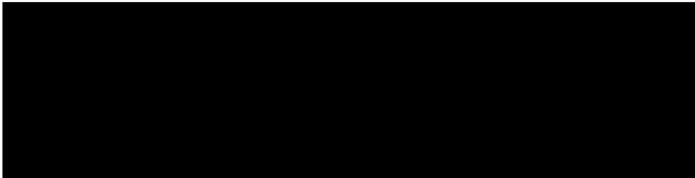
U.S. Department of Homeland Security  
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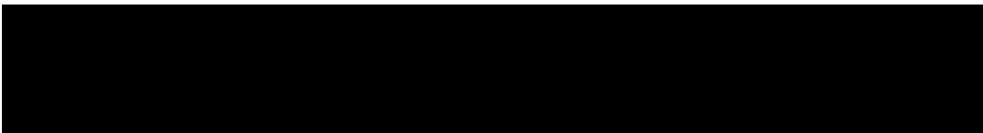
FILE: [REDACTED]  
MSC 02-232-67405

Office: LOS ANGELES Date: FEB 27 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).

IN BEHALF OF APPLICANT:



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, Los Angeles, on January 9, 2007. The decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on January 2, 2008, finding that it had been untimely filed. The applicant, through counsel, has now submitted proof that the appeal had been timely filed with the Los Angeles District Office. In response, the AAO has *sua sponte* reopened its prior decision.<sup>1</sup> The AAO's decision of January 2, 2008 will be withdrawn. The appeal will be dismissed.

On May 20, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application) with the Immigration and Naturalization Service (or Service, now U.S. Citizenship and Immigration Services or CIS). The director issued a Notice of Intent to Deny (NOID) on November 29, 2006, finding that the applicant was ineligible for lawful permanent resident status under the LIFE Act for having been convicted of three misdemeanors, in 1981, 1982 and 1985, respectively. In response, the applicant, through counsel, submitted a letter from the Bureau of Criminal Identification and Information, California Department of Justice, indicating that a search based on the applicant's fingerprints revealed no criminal history record, and information indicating that under California law, misdemeanor records are destroyed five or ten years after the final disposition. The director subsequently denied the application "for the reasons contained in the NOID," and also found that the applicant failed to provide sufficient evidence that he entered the United States before January 1, 1982.

On appeal, the applicant, through counsel, reiterates that neither U.S. Federal Bureau of Investigation (FBI) nor California records indicate the existence of any convictions. Counsel also asserts that the applicant has submitted sufficient evidence of unlawful residence in the United States for the requisite period.

The AAO notes that the record contains sufficient evidence of the applicant's entry into the United States before January 1, 1982 and unlawful residence thereafter as claimed,<sup>2</sup> and finds that for purposes of this decision it is not necessary to review this evidence. The administrative record indicates that in 1987 the applicant submitted a Form I-687, "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act [(Act), 8 U.S.C. § 1255a]" and was granted temporary resident status in 1988 after he proved to the Service that he had resided unlawfully in the United States for the requisite period. As indicated in the NOID, however, the decision on appeal is based on a conclusion that prior convictions render the applicant ineligible for the benefit sought, and it is that conclusion that will be addressed here.

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<sup>1</sup> Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 1104 of the LIFE Act are not permitted. 8 C.F.R. § 245a.20(c). The AAO may, however, *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

<sup>2</sup> Notably, the applicant's prior conviction of 1981, cited by the director as one of the disqualifying factors in this case, is relevant contemporary evidence of his presence in the United States at that time. Moreover, in 1988 the Service recognized the applicant's entry before January 1, 1982 and unlawful residence thereafter when it granted the applicant temporary resident status. In reaching that decision, the Service considered the probative value of evidence in the record, including social security records from 1981 through 1987.

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act.<sup>3</sup>

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 under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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 issue in this proceeding is whether the applicant is ineligible for adjustment to permanent resident status under the LIFE Act due to three or more misdemeanor convictions. The director described the relevant convictions in the NOID as follows:

You were convicted of the following crimes which shows [*sic*] on your DMV record:

1. 23152 (A) VC on August 17, 1981, in the Superior Court of California.
2. 23152 (B) VC on October 6, 1982, in the Superior Court of California.
3. 14601.2 VC on December 27, 1985, in the Superior Court of California.

The director also noted that the applicant had been requested by the Service to submit original dispositions on those arrests, but that he failed to do so, and that “under a previous investigation it was determined you were convicted on all the arrests which make you ineligible for legalization under the LIFE Act. You filed an appeal to the original termination notice on June 4, 1992 which was denied by

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<sup>3</sup> A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case there is no such evidence in the record. In fact, there is evidence that the applicant was not a class member. Class members are, by definition, individuals who were turned away or discouraged from filing a Form I-687 application during the original legalization application period of May 5, 1987 to May 4, 1988. *See Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements). In this case, the applicant was not turned away or discouraged from applying. To the contrary, he filed a Form I-687 application on August 11, 1987 and was granted temporary resident status under section 245A of Act. Such status was later terminated based on the applicant’s convictions, which are the subject of this appeal. In light of this evidence, the applicant would be ineligible to adjust status under section 1104 of the LIFE Act.

the Service.” It appears that the applicant did submit relevant documents describing relevant dispositions. The record includes the applicant’s response to a request for evidence in 1992 in connection with his I-687 application, consisting of a computer printout of the applicant’s California Department of Motor Vehicles record issued on October 18, 1989 and copies of court records from September 1987 through February 1989 from the Municipal Court of Citrus Judicial District, Los Angeles County. These records show the following convictions, all of which are misdemeanor violations of the California Vehicle Code (VC):

1. August 17, 1981, Violation of VC 23102a, driving under the influence of alcohol (prior law)
2. October 6, 1982, Violation of VC 23152a, driving under the influence of alcohol
3. December 27, 1985, Violation of VC 14601.2, driving with a suspended license
4. January 31, 1989, Violation of VC 23152a, driving under the influence of alcohol

The applicant’s confirmed criminal record thus varies slightly from the director’s list and includes a fourth misdemeanor conviction.

Also included in the applicant’s administrative record is the Service’s Notice of Intent to Terminate the applicant’s temporary resident status granted pursuant to his I-687 application. It notes additional convictions for violations of the California VC. A Notice of Termination was issued on May 26, 1992, based on those convictions.<sup>4</sup> The applicant appealed that decision, submitting a Form I-694 Notice of Appeal on June 5, 1992, in which he stated, “I understand that I have more than the three legally permitted misdemeanors and I have no argument to that fact.” These misdemeanors remain as a ground of ineligibility for adjustment to permanent resident status under the LIFE Act.

Although counsel for the applicant has submitted evidence indicating that a search based on the applicant’s fingerprints revealed no criminal history, and information that California misdemeanor records are destroyed five or ten years after the final disposition, this cannot overcome the evidence of convictions in the applicant’s administrative record. It is clear that the applicant has been convicted of at least four misdemeanors, regardless of the current lack of availability of records of those 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 under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). In light of the applicant’s four misdemeanor convictions, described above, he 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.

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<sup>4</sup> The result of an FBI fingerprint search in January 1989 is also included in the record. It shows a prior conviction in 1975 and two prior convictions in 1978 for violations of the California VC. However, a current fingerprint search by the FBI in the record failed to indicate any prior arrests or convictions. As the FBI searches have produced contradictory results, the AAO will not consider the FBI evidence to be probative in this case.