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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC-02-142-61294

Office: SAN FRANCISCO (FRESNO) Date: **JUL 28 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:

[REDACTED]

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.

for *Michael T. Kelly*
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, San Francisco, 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. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

On appeal, counsel submits a timely Form I-290B, Notice of Appeal, a written statement, and a court disposition dismissing case number [REDACTED]. On appeal, counsel stated that cases number [REDACTED] and [REDACTED] [have] been dismissed.” Counsel states that as two of the applicant’s cases have been dismissed, the applicant “is now eligible to adjust his status in the United States.” 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).

"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 August 27, 1990, the applicant pled no contest to a violation of section [REDACTED]. On September 25, 1990, the Superior Court of California County of Madera convicted the applicant of a misdemeanor violation of section [REDACTED] and he was given a conditional and revocable release for 2 years, and was ordered to pay a fine of \$525.00 and submit to drug and alcohol tests. (Case No: [REDACTED])

- The record reflects that on August 24, 1993, the applicant was arrested by the Department of California Highway Patrol. On November 29, 1993, the applicant pled guilty to a violation of section 148.9a PC. The Superior Court of California County of Madera sentenced the applicant to a work program for 40 hours, 17 days suspended for 18 months, and a \$675.00 fine. On September 20, 2002, the Superior Court of California County of Madera dismissed the case. (Case No. [REDACTED])
- The record reflects that on July 24, 2001, the applicant the applicant pled guilty to failure to obey a lawful order from a police officer. The Justice Court Kingman/Cerbat Precinct found the applicant guilty and he was ordered to pay a \$300.00 fine. (Case No. [REDACTED])

The AAO finds that the applicant is ineligible for the benefits sought, because of his three misdemeanor convictions. Despite the Court of the State of California County of Madera dismissing one of the applicant's cases (Case No. [REDACTED]) 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).

Although counsel states that the applicant's case number [REDACTED] was also dismissed by the court, the record of proceeding contains no evidence that case number [REDACTED] was in fact dismissed by the Court of the State of California County of Madera. Moreover, under the statutory definition of conviction, as noted above, an alien remains convicted for immigration purposes notwithstanding a subsequent state action dismissing the conviction. *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. The applicant's three misdemeanor convictions renders the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c). **Accordingly, the appeal must be dismissed.**

Because of his three misdemeanor convictions, the applicant is ineligible for adjustment to 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.

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. The applicant has failed to meet this burden.

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