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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE:

[REDACTED]

MSC 03 248 62189

Office: LOS ANGELES

Date:

JUN 30 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 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 (director) in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

The director denied the application on the ground that the applicant had been convicted of three or more misdemeanors in the State of California, which made him ineligible for LIFE legalization under section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1).

On appeal counsel asserts that the applicant has only been convicted of one misdemeanor, and therefore is not ineligible for LIFE legalization.

The applicant, a native of Mexico who claims to have lived in the United States continuously since November 1977, filed his application for permanent resident status under the LIFE Act (Form I-485) in June 2003.

In a Notice of Intent to Deny (NOID issued on September 11, 2006, the director cited documentation in the record showing that the applicant had a series of arrests and misdemeanor charges under the California Vehicle Code (VC) between 1980 and 2003, which resulted in at least three and as many as seven convictions. The director indicated that a conviction can be nullified for immigration purposes only if it is vacated on the merits.<sup>1</sup> Since the LIFE Act

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<sup>1</sup> Section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" as follows:

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.

Under the statutory definition of "conviction" 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 by operation of a state rehabilitative statute. See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. See also *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000) (conviction vacated under a state criminal procedural statute, rather than a rehabilitative provision, remains vacated for immigration purposes). In *Matter of Pickering*, a more recent precedent decision, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains "convicted" for immigration purposes. See *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003). (Continued next page.)

specifies that an alien is ineligible for legal permanent resident status if he or she has been convicted of a felony or three misdemeanors committed in the United States, the director advised the applicant of her intention to deny his application and granted him 30 days to submit additional evidence to rebut the evidence of record.

On October 23, 2006 the director denied the application for the reasons stated in the NOID, stating that the applicant had not responded to the NOID and therefore failed to overcome the grounds for denial.

On appeal counsel asserts that he did file a timely response to the NOID, and submits documentary evidence thereof in the form of a certified mail receipt and photocopies of the applicant's submission, which consisted of the following:

- (1) A letter to the applicant from the California Department of Justice, Bureau of Criminal Identification and Information, dated September 28, 2006, stating that his fingerprints revealed an existing criminal history record in the state.
- (2) A printout confirming that the applicant had been convicted on May 1, 2003, under VC section 23152(b), of driving under the influence (DUI) with a blood alcohol weight of 0.08 % or more – a misdemeanor offense.
- (3) A letter from counsel, dated October 9, 2006, asserting that since no other arrests or convictions appear on the printout the applicant is eligible to adjust his status.

The AAO does not agree with counsel's contention. The letter from the State of California does not state that the applicant has only been convicted of a single misdemeanor, and the accompanying printout is evidently incomplete since there is documentation in the record of multiple arrests and convictions. These arrests and convictions were listed in the NOID, but counsel has ignored them both in his response to the NOID and in the current appeal. Counsel has also ignored the director's discussion in the NOID of the continuing validity of criminal convictions, for immigration purposes, unless they were vacated on the merits.

As provided in 8 C.F.R. § 103.3(a)(3)(iv), any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision confirms that the director accurately set forth a legitimate basis for denial of the application. On appeal counsel asserts that the applicant has only one misdemeanor conviction, and therefore is eligible for legalization under the LIFE Act, but has not addressed

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(From previous page.) The record shows that the applicant filed petitions to set aside at least some of his convictions, but that they were not based on the merits of those cases. For immigration purposes, therefore, the applicant would remain convicted of the subject misdemeanors even if such petitions were granted by the court.

any of the other misdemeanor arrests and convictions cited by the director as the basis for denying the application. Since the materials submitted on appeal fail to address the substantive basis for the denial of the application, as set forth in the NOID, the AAO finds the appeal to be frivolous within the meaning of 8 C.F.R. § 103.3(a)(3)(iv).

Accordingly, the appeal will be summarily dismissed.

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