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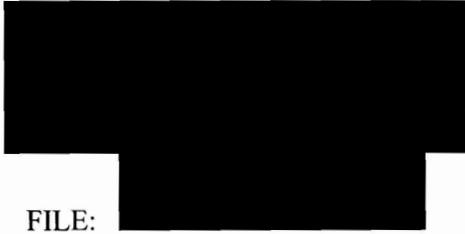
U.S. Department of Homeland Security
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FILE: MSC 02 250 60799

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Date: **MAR 17 2008**

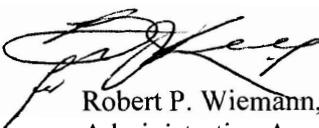
IN RE: Applicant: [Redacted]

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


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, California and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director concluded that the applicant had been convicted of at least three misdemeanors in the United States, and accordingly, denied the application.

On appeal, counsel asserts that the United States Court of Appeals for the Ninth Circuit has rejected the Service's position as set forth in *Matter of Roldan* that expungements are ineffective for purposes of removing convictions for immigration purposes.

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. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 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 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).

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

The FBI record dated July 30, 2002, reflects that on June 22, 1991, the applicant was arrested by the Los Angeles Police Department for assault with a deadly weapon-no firearm.

On February 8, 2005, the director issued a Form I-72, requesting the applicant to submit the final court dispositions for all arrests including his June 22, 1991, arrest. The applicant, in response, submitted:

1. A court document dated February 18, 2005, from the Los Angeles County Superior Court indicating that a search of its misdemeanor and felony indices was conducted and no record was found for 1991.
2. On November 2, 1990, the applicant was arrested and subsequently charged with driving without a license, a violation of section 12500(a) VC, and driving while license is suspended, a violation of section 14601.1(a) VC, both misdemeanors. On November 30, 1993, the applicant was convicted of violating section 12500(a) VC, and was sentenced to serve five days in jail and placed on probation for two years. The remaining charge was dismissed. On September 20, 2005, this conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
3. On October 24, 1992, the applicant was arrested and subsequently charged with driving under the influence, a violation of section 23152(a) VC, driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, and driving while license is suspended, a

violation of section 14601.1(a) VC, all misdemeanors. On January 4, 1993, the applicant was convicted of violating section 23152(b) VC. The applicant was ordered to pay a fine or serve 13 days in jail and was placed on probation for three years. The remaining charges were dismissed. The applicant subsequently violated his probation and on November 10, 1992, the applicant was ordered to serve 23 days in jail. On January 20, 2006, this conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

4. On November 9, 1993, the applicant was arrested and subsequently charged with driving while license is suspended, a violation of section 14601.1(a) VC, a misdemeanor. On January 6, 1994, the applicant was convicted of this offense. The applicant was ordered to pay a fine or serve ten days in jail and was placed on probation for three years. On November 25, 2006, this conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
5. On March 22, 1995, the applicant was arrested and subsequently charged with driving while license is suspended, a violation of section 14601.5(a) VC, a misdemeanor. On June 5, 2000, the charge was dismissed. Case no. [REDACTED]

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, 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. 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).

The Board of Immigration Appeals (BIA) revisited the issue in *Matter of Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002) and concluded that Congress did not intend to provide any exceptions from its statutory definition of a conviction for expungement proceedings pursuant to state rehabilitative proceedings.

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the BIA found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. The BIA reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains "convicted" for immigration purposes.

Therefore, pursuant to the above precedent decisions, no effect is to be given to the applicant's expungements

The applicant is ineligible for the benefit being sought due to his three misdemeanor convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). Therefore, the applicant 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.