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U.S. Citizenship  
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[Redacted]

FILE: [Redacted]  
MSC 02 242 61376

Office: LOS ANGELES

Date: MAY 01 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 Records 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.

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 case will be remanded for further action and consideration.

The director determined that the applicant had been convicted of a felony and therefore, pursuant to 8 C.F.R. § 245a.11(d)(1), was ineligible for adjustment to status under the LIFE Act. Accordingly, the director denied the application for adjustment of status as a permanent resident.

On appeal, counsel asserts that the director's determination that the applicant is ineligible for adjustment of status under the LIFE Act is erroneous as a matter of law. Counsel submits copies of previously submitted documentation in support of the appeal.

The regulations at 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18 provide that 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 status under the LIFE Act.

The applicant's criminal record history reveals the following:

1. On September 19, 1988, the applicant was convicted in the Municipal Court of Inglewood Courthouse Judicial District, County of Los Angeles, of driving under the influence of alcohol or drugs in violation of California Vehicle Code 23152(a), a misdemeanor. He was placed on summary probation for 36 months. Case no. [REDACTED]
2. On November 6, 1997, the applicant was convicted in the Municipal Court of Torrance Courthouse Judicial District, County of Los Angeles, of possession of a narcotic controlled substance, in violation of California Health and Safety Code 11350(a), a felony. The court deferred entry of judgment for 18 months, and ordered the applicant to pay restitution and a diversion administration fee. The applicant was also convicted of driving a vehicle with a blood alcohol content of .08% or more, in violation of California Vehicle Code 23152(b), a misdemeanor. Case. No. [REDACTED]

The director determined that the applicant had been convicted of a felony and therefore ineligible for adjustment of status under the LIFE Act.

Relying on *Lujan-Armendariz v. INS*, 222 F. 3d 728 (9<sup>th</sup> Cir. 2000), counsel asserts that the applicant is entitled to treatment under the equivalent of the Federal First Offender Act (FFOA). To qualify for first offender treatment under federal laws, the applicant must show that (1) he has been found guilty of simple possession of a controlled substance; (2) he has not, prior to the commission of the offense, been convicted of violating a federal or state law relating to controlled substances; (3) he has not previously been accorded first offender treatment under any law; and (4) the court has entered an order pursuant to a state rehabilitative statute under which the criminal proceedings have been deferred or the proceedings have been or will be dismissed after probation. *Cardenas-Uriarte v. INS*, 227 F.3d 1132, 1136 (9<sup>th</sup> Cir. 2000).

The record reflects that the applicant pleaded guilty to possession of a narcotic controlled substance, and there is no evidence in record to indicate that has a prior conviction relating to a controlled substance. The

record also does not reflect that the applicant has ever been accorded first offender treatment prior to this conviction. Finally, the record establishes that the applicant's deferred judgment was terminated and his plea to possession of a narcotic controlled substance was set aside on May 6, 1999.

If an applicant is sentenced under a state counterpart to the FFOA provisions of the Controlled Substances Act, the applicant shall not be considered to have been convicted for immigration purposes. *Matter of Deris*, Int. Dec. 3102 (BIA 1989); *Matter of Seda*, 17 I&N Dec. 550, 554 (BIA 1980). Therefore, aliens sentenced under a state equivalent to the FFOA provision are not ineligible for adjustment of status under the LIFE Act.

Accordingly, the director's decision that the applicant has been convicted of a felony and therefore ineligible for adjustment of status under the LIFE Act is withdrawn. The applicant's criminal record, therefore, reflects that, for immigration purposes, he has been convicted of two misdemeanors. As such, his criminal record does not render him ineligible for adjustment of status under the LIFE Act.

However, the application may not be approved as the record now stands. The record does not reflect that the applicant has submitted sufficient evidence to establish that he has resided continuously in the United States from prior to January 1, 1982, through May 4, 1988. Further, the director did not address this deficiency in the Notice of Intent to Deny (NOID) or in the Notice of Denial.

Accordingly, the case is remanded for the issuance of a NOID advising the applicant of the deficiencies in this evidence as it relates to his continuous residency in the United States during the qualifying period, and for entry of a new decision in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.