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

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FILE:

MSC 02 197 64926

Office: LOS ANGELES

Date:

MAY 05 2008

IN RE:

Applicant:

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:

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

The district director denied the application, finding that the applicant was not an eligible alien, as defined by 8 C.F.R. §254a.10, in that he had been convicted of two felonies.

On appeal, counsel for the applicant urges reconsideration and contends that the director misinterpreted the documentation provided. Specifically, counsel contends that the applicant's convictions have been deemed misdemeanors and were ultimately dismissed. In addition, the applicant contends that since his two convictions resulted from one scheme, they are deemed one offense, not two as contended by the director.

The regulations at 8 C.F.R. § 245a.10(d)(1) provides in pertinent part that an eligible alien may adjust to legal permanent resident status under LIFE legalization if he or she "has not been convicted of any felony or of three or more misdemeanors committed in the United States."

The record contains evidence that the applicant pled guilty to the following two felonies in the State of California on March 10, 2000:

<u>Section Violation</u>	<u>Offense</u>
496(a) PC	Receiving Stolen Property
475(a) PC	Possessing, Receiving, or Uttering Forged Paper ¹

The record indicates that the applicant was sentenced to 90 days in jail, three years of formal probation, and ordered to pay \$200.00 in State Restitution Fines.

In support of his claimed eligibility, the applicant submits a copy of a Petition and Order under P.C. 1203.4/1203.4a, indicating that on April 28, 2003, the applicant petitioned the court to withdraw his guilty plea because he had satisfied the terms of his probation. The record indicates that the applicant's guilty plea was set aside, a plea of not guilty was entered, and the case was dismissed as to both counts. Counsel for the applicant claims that these expungements overcome the basis for the denial of the application, since they permitted him to withdraw his guilty plea and/or set aside the verdict or finding of guilt, and thus rendered him eligible for the benefit sought. The AAO disagrees.

In applying the definition of a conviction under section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A) the Board of Immigration Appeals (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. Thus, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. If,

¹ Orange County Court, Docket No. CH99WF2537.

however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains “convicted” for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *see also Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). In this case, there is no allegation or evidence that there were any legal defects in the underlying criminal proceedings.

Since the applicant has been convicted of a total of two felonies, 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.