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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 247 66257

Office: HOUSTON

Date: **MAY 23 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had been convicted of three or more misdemeanors and therefore, pursuant to 8 C.F.R. § 245a.18(a), was ineligible for adjustment of status under the LIFE Act. Accordingly, the director denied the application for adjustment of status as a permanent resident.

The applicant's criminal record history reveals the following:

1. On January 26, 1990, the applicant was convicted in the Criminal Court of Harris County, Texas of the misdemeanor offense of failure to stop and give information. He was sentenced to four days of confinement, ordered to pay a fine of \$100 plus court costs and fees. Cause no. [REDACTED]
2. On January 26, 1990, the applicant was convicted in the Criminal Court of Harris County, Texas of the misdemeanor offense of driving while license suspended. He was sentenced to four days of confinement in the Harris County Jail, ordered to pay a fine of \$100 plus court costs and fees. Cause no. [REDACTED]
3. On June 8, 2001, the applicant was convicted in the Criminal Court of Harris County, Texas of the misdemeanor offense of reckless driving. He was sentenced to two days of confinement in the Harris County Jail, ordered to pay a fine of \$100 plus court costs and fees. Cause no. [REDACTED]

The record, therefore, reflects that the applicant was convicted of three misdemeanors. The regulation at 8 C.F.R. § 245a.18 provides:

(a) *Ineligible aliens.* (1) 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 LPR status under this Subpart B.

On appeal, the applicant states that all of his cases involved court appointed attorneys who advised him to plead guilty in order to get out of jail quickly. He stated that he has only spent five days total in jail for all of his offenses. The applicant also stated that two of the offenses occurred in 1989, when he was "young and ignorant."

Nonetheless, the applicant does not allege and the record does not reflect that any of the convictions have been set aside on the merits. Accordingly, as the applicant has been convicted of three misdemeanors, he is inadmissible to the United States and is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the applicant has not established that he resided continuously in the United States in an unlawful status from prior to January 1, 1982, to May 4, 1988.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;
- (2) The alien was maintaining residence in the United States; and
- (3) The alien's departure from the United States was not based on an order of deportation.

The record reflects that the applicant was deported from the United States on January 11, 1985. Accordingly, this absence as a result of deportation interrupted his continuous residence in the United States.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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