

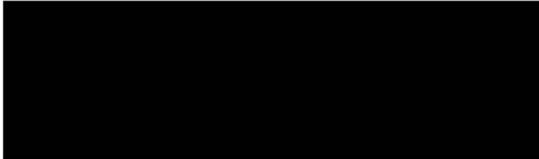
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: LOS ANGELES

Date:

MAY 30 2008

MSC 02 246 63178

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:

Self-represented

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 [or 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 (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant had been convicted of a felony in the United States, and accordingly, denied the application.

On appeal, the applicant apologizes for his wrongdoings. The applicant states that his felony conviction was reduced to a misdemeanor and subsequently dismissed.

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 record reflects the applicant’s criminal history in the state of California:

1. March 3, 1987, the applicant was arrested in San Diego for attempted entry by falsely representing to be a United States Citizen. Prosecution was declined and the applicant was returned to the Mexican immigration authorities.
2. On July 8, 1996, the applicant was charged with fraud to obtain aid, a violation of section 10980(c)(2) W&I, and six counts of perjury, a violation of 188 PC, all felonies. The welfare fraud offense was committed on or about May 1, 1993, in Los Angeles, County. On September 25, 1996, the applicant was convicted of violating section 10980(c)(2) W&I, a felony, and placed on three years probation and ordered to pay restitution. The six counts of perjury were dismissed. On November 20, 1997, a warrant was issued as the applicant violated the terms of his probation. On November 24, 1997, the bench warrant was ordered recalled and the court reinstated the applicant’s probation. On May 26, 2000, the probation was extended to November 27, 2000, and the applicant was ordered to perform 84 hours of community service. On November 27, 2000, the charge was reduced to a misdemeanor pursuant to section 17(b), a plea of not guilty was entered and the case was dismissed pursuant to section 1203.4 PC. Case no. [REDACTED].
3. On October 5, 1997, the applicant was arrested by the Sheriff’s Department in Bakersfield for petty theft. On October 10, 1997, the applicant pled guilty to violating section 488 PC, petty

theft, a misdemeanor. The applicant was placed on probation for three years and ordered to serve 30 days in jail. Case no. [REDACTED]

In response to a request by the AAO on April 8, 2008, to submit the complete court transcripts of number two above, the applicant provided court documentation reflecting that the proceedings were first held in the Los Angeles County Municipal Court and subsequently certified to the Superior Court on August 28, 1996, for felony sentencing.

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. 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.

The documentation submitted by the applicant does not suggest that the applicant's conviction was reduced or expunged based on the merits of the case. Therefore, despite the reduction of the conviction, the applicant remains convicted, for immigration purposes, of the felony noted above.

The applicant is ineligible for the benefit being sought due to his felony conviction. 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.