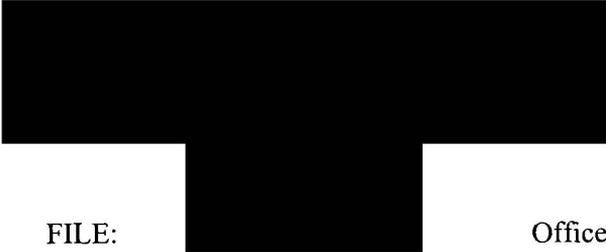




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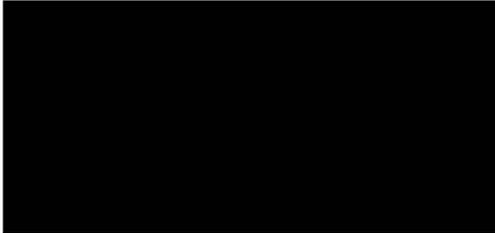


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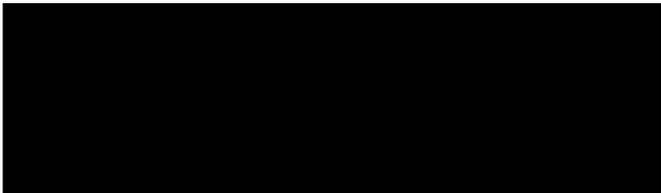
Date: NOV 28 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because he had been convicted of three misdemeanors in the United States. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant is represented by counsel on appeal. Counsel states that the applicant is currently pursuing post-conviction relief that will remedy the applicant's criminal ineligibility. Counsel avers that the applicant is otherwise eligible for adjustment to permanent resident status under the provisions of the LIFE Act.

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 Resident status. 8 C.F.R. § 245a.18(a)(1). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except 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 such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"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 such alien 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).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A)..

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, 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 record contains court documents that reflect the applicant has been convicted of the following offenses in California:

- A June 18, 1980 conviction for a violation of section 10852 of the California Vehicle Code, *Tampering With a Vehicle*. This offense is considered a misdemeanor under California law. The applicant was sentenced to 6 days in jail and 12 months probation. In this case, the applicant was originally charged with a violation of section 459 of the California Penal Code, *Burglary/Auto*, and with a violation of 8 U.S.C. §1325, *Illegal Entry*.
- A February 26, 1987 conviction for a violation of section 496 of the California Penal Code, *Receiving Stolen Property*, a misdemeanor. The applicant was sentenced to 18 months probation, and 30 days in jail.
- An August 29, 2000 conviction for a violation of section 484(A) of the California Penal Code, *Theft*, a misdemeanor. The applicant was placed on 36 months probation, and sentenced to one day in jail.

The record before the AAO also contains FBI documents that reveal the applicant was charged with a series of criminal violations, for which no ultimate court disposition appears. For example, on July 27, 1980, the applicant was charged with a violation of section 12020(A) of the California Penal Code, *Possession, Manufacture or Sell Dangerous Weapon*. Thereafter, on May 10, 1982, the applicant was charged with a violation of section 11352 of the California Health and Safety Code, *Transportation or Sale of a Narcotic or Controlled Substance*. This charge was dismissed on June 24, 1982, for insufficiency of admissible evidence. On March 4, 1991, the applicant was charged with a violation of section 496 of the California Penal Code, *Receiving Stolen Property*. Additionally, on December 19, 1996, the applicant was charged with a series of offenses, including a violation of 11366.8(A) of the California Health and Safety Code, *Use of Fake Compartment to Conceal Controlled Substance*, a violation of section 11370.6 of the California Health and Safety Code, *Possession of Money, Etc., from Sale of Controlled Substance*, a violation of 12025 of the California Penal Code, *Carrying a Concealed Weapon on Person or Vehicle*, and a violation of 12031(A) of the California Penal Code, *Carrying a Loaded Firearm in a Public Place*. As noted above, the record contains no evidence regarding the final disposition of these charges, and it is insufficient to state that the records have been destroyed. The applicant must provide proof of the final court disposition of the charges, and a failure to do so makes the applicant equally ineligible for adjustment of status.

Counsel's assertion that the applicant is pursuing post-conviction relief is without merit. Even if the applicant were to obtain orders vacating any of the misdemeanor convictions, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits as a result of underlying procedural or constitutional defects are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan, id.* Therefore, the applicant remains "convicted" of the three misdemeanor offenses cited above for immigration purposes.

Furthermore, the record before the AAO contains a copy of the applicant's motion for post-conviction relief under the provisions of section 1016.5 of the California Penal Code. This section requires the court to advise a defendant alien of the immigration consequences of entering a guilty plea or a plea of

nolo contendere before accepting such a plea. The applicant's motion was served on the District Attorney's Office, El Monte, on June 12, 2007. To date, no evidence suggests that the applicant's motion was successful. Finally, counsel's argument that "the 'old' law under INA §245A, where this case falls under, does allow for expungements to eliminate the immigration consequences for criminal convictions" is rendered moot, because the record contains no evidence of an expungement for any reason.

Because of his three misdemeanor convictions, the applicant is ineligible for adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1). Within the provisions of the LIFE Act, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

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