



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 250 61035

Office: LOS ANGELES

Date: NOV 28 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 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 failed to provide evidence of final court dispositions for two¹ arrests in 1990, 1991, and because he failed to demonstrate enrollment in an English, History, and Government class. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant is represented by counsel on appeal. Counsel stated on the Notice of Appeal (Form I-290B) that he would file a brief in support of the appeal, proof of enrollment in a basic citizenship class, and original documents detailing the applicant's criminal history. To date, no brief or original court documents have been filed.

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

¹ The record before the AAO contains evidence of a third misdemeanor conviction in 2000 discussed *infra*.

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 charged with the following three misdemeanor offenses, and convicted of one offense, in Orange County, California:

- An October 5, 1990 arrest for a violation of section 273.5(A) of the California Penal Code, *Inflict Corporal Injury on a Spouse/Cohabitant*. The applicant was also charged with violating section 240 of the California Penal Code, *Assault*, as well as violating section 242 of the California Penal Code, *Battery* (Docket No. [REDACTED] and [REDACTED]). The applicant submitted a photocopy from the California state Department of Justice dated September 20, 2006 that identifies these charges, but does not explain their ultimate disposition.
- A May 24, 1991 arrest for a violation of section 148.9(A) of the California Penal Code, *False ID to Peace Officer* (Docket No. [REDACTED] and [REDACTED]). This offense is also listed on the California state Department of Justice letter, but there is no corresponding description of the final court disposition.
- A November 6, 2000 conviction for a violation of section 23152(B) of the California Vehicle Code, *DUI/Driving with a Blood Alcohol Level .08 or More*. A second count of violating section 23152(A) of the California Vehicle Code, *DUI/Alcohol and/or Drugs*, was dismissed at the time of sentencing. The applicant was sentenced to 3 years probation and ordered to pay a fine.

In a letter dated September 25, 2007, applicant's counsel states that the applicant "is still in the process of obtaining an updated criminal history report", and that the applicant is "currently completing the requisite forty hours in U.S. history and government." In support, the applicant submitted a transcript from the North Orange County Community College, School of Continuing Education, dated September 4, 2007. The transcript indicates that the applicant is enrolled in English as a Second Language (ESL) class, but he has not accumulated any credit hours to date.

In response to the request for evidence (Form I-72, dated August 15, 2006), the applicant failed to submit the requested court dispositions. Instead, the applicant submitted a letter from his attorney and photocopies of a criminal history that do not reflect the ultimate disposition of two of the applicant's three arrests. The applicant has not provided any of the evidence requested by the director. For this reason alone, the application cannot be approved. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. 8 C.F.R. § 103.2(b)(12). Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by the United States Citizenship and Immigration Services (USCIS). The applicant must agree to fully

cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

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.