



U.S. Citizenship  
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FILE:

MSC 04 255 14320

Office: HOUSTON

Date:

OCT 22 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. Any further inquiry must be made to that office.

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

In his decision the director denied the application because it was determined that the applicant had been convicted of a drug offense and was found inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(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).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following criminal charges:

- 1). On August 22, 1983, the applicant was convicted of Carrying a Weapon (a misdemeanor) in the County Criminal Court for Harris County, Texas. Case No. [REDACTED]
- 2). On September 16, 1998, the applicant was convicted of Possession of Cocaine, a misdemeanor, in the County Criminal Court for Harris County, Texas. Case No. [REDACTED]

The director determined that the applicant had been convicted of possession of narcotics/controlled substance and was inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and was thus ineligible for LIFE Act legalization.

On appeal, counsel for the applicant asserts the applicant is eligible, as the cocaine conviction was only a misdemeanor. On appeal the applicant submits copies of disposition statements issued by Harris County Criminal Court.

The applicant pled no contest and was convicted of the charge listed at No. 2 above. Although the charge was dismissed on September 22, 1999, the applicant remains convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

Conviction of a drug related crime is not a waivable offense, and there is no exception for a misdemeanor drug conviction. As such, the applicant is ineligible for LIFE Act legalization and the director's decision will be sustained.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). Based on the evidence of record, the applicant has failed to establish that he is eligible for adjustment to temporary resident status.

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