



U.S. Citizenship  
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[Redacted]

FILE: [Redacted]  
MSC 02 235 61377

Office: Los Angeles

Date: **SEP 02 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 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.

**On appeal, counsel concedes that the applicant has four misdemeanor convictions.** Counsel asserts however, that the convictions should not bar the applicant from adjusting under the LIFE Act because the convictions occurred outside of the qualifying period, January 1, 1982 to May 4, 1988.

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 under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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).

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)..

In applying the definition of a conviction under section 101(a)(48)(A) of the Act, the Board of Immigration Appeals (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. Thus, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a “conviction” within the meaning of section 101(a)(48)(A) of the Act; if, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains “convicted” for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). In this case, the applicant does not claim any defect in the underlying criminal proceedings.

In the Notice of Intent to Deny (NOID), dated July 28, 2005, the director notified the applicant of her intention to deny the application because the applicant was ineligible due to his four convictions. The

director granted the applicant thirty (30) days to submit rebuttal evidence. The director denied the application on November 14, 2005, for the reasons stated in the NOID. The director noted that the applicant failed to respond to the NOID.

The record contains court documents that reflect the applicant has been convicted of the following offenses:

1. On December 4, 1997, the applicant was convicted, on guilty pleas, in the Superior Court of California, County of Orange, for violation of: Count 1: VC 23152(A) – DUI ALCOHOL AND/OR DRUGS, a misdemeanor; and, Count 2: VC 23152(B) – DUI/B.A. .09 OR MORE, a misdemeanor. The court sentenced the applicant to 3 years probation, plus fines and other restrictions; and,
2. On February 26, 2002, the applicant was convicted, on guilty pleas, in the Superior Court of California, County of Orange, for violation of: Count 1: VC 23152(A) – DUI ALCOHOL AND/OR DRUGS, a misdemeanor; and, Count 2: VC 23152(B) – DUI/B.A. .09 OR MORE, a misdemeanor. The court sentenced the applicant to 45 days, 3 years probation, plus fines and other restrictions.

On appeal, counsel admits that the applicant has had four misdemeanor convictions, but asserts that the convictions should not bar the applicant from adjusting under the LIFE Act because the convictions occurred outside of the qualifying period, January 1, 1982 to May 4, 1988.

Counsel's assertion is without merit. There is no basis in the Act or in the regulations that would permit the applicant to avoid the requirements for adjustment to permanent resident status under the provisions of the LIFE Act. It is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all Citizenship and Immigration Services offices.

The court record shows that the applicant was convicted of four misdemeanors, described above. Because the applicant has three or more misdemeanor convictions, the applicant is ineligible to 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 applicant convicted of a felony or three or more misdemeanors committed in the United States.

An applicant 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 Act, 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.