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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC 03 248 64442

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. 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.

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 a felony or three or more misdemeanors committed in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act.

On appeal, the applicant's representative submits a brief and an additional document.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. *See* 8 C.F.R. § 245a.12(e).

An alien shall not be eligible for adjustment of status to permanent resident status under the LIFE Act if the alien has been convicted of any felony or three or more misdemeanors committed in the United States. *See* 8 C.F.R. § 245a.18.

8 C.F.R. §§ 245.a.1(o) and (p) define "misdemeanor" and "felony" as:

*Misdemeanor* means a crime committed in the United States, either 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 CFR § 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.

*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 section 245a, the crime shall be treated as a misdemeanor.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on June 6, 2003.

The record reflects that the applicant has been convicted of the following offenses:

1. In or about July 1989, for a misdemeanor violation of California Penal Code (PC) section 419, for which he was sentenced to five days in county jail;
2. In or about March 1995, in the Municipal Court of Van Nuys Judicial District, County of Los Angeles, of Trespass, a misdemeanor violation of California PC section 602(j); and,
3. In March 1995, in the Municipal Court of Downey Judicial District, County of Los Angeles, of "Carry Concl'd Firearm on Prson," a misdemeanor violation of California PC section 12025(a)(2).

On appeal, the applicant's representative asserts, in reference to No. 1, above, that "[T]he court did not find any record of any conviction for this arrest." In support of this assertion, the representative submits a letter, dated September 27, 2006, from the Superior Court of California, County of Los Angeles, stating that there is no record of an arrest for the applicant in reference to a July 11, 1989 arrest for "Retake Land After Legal Removal." Counsel's assertion and the document submitted are, however, contradicted by a document provided to CIS and certified on December 27, 2006, by the Bureau of Criminal Identification, Department of Justice, State of California, showing that the applicant pled guilty to a violation of California PC section 419 for which he was sentenced to five days in county jail.

Because of his three misdemeanor convictions, the applicant is ineligible for adjustment of status 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. Here, the applicant has failed to meet this burden.

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