

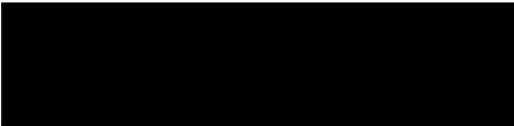
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U.S. Citizenship
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Services

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FILE:



MSC 02 186 60670

Office: Los Angeles

Date: JUN 01 2006

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 pursuant to 8 C.F.R. 245a.18(a)(1), because he had been convicted of three misdemeanors in the United States.

On appeal, counsel contends that the applicant remained eligible to adjust to permanent resident status under the provisions of the LIFE Act because the petty theft exception contained in section 212(a)(2)(A)(ii)(II) of the Immigration and Nationality Act (Act) applied to the applicant's criminal convictions, and, therefore reduced his three misdemeanor convictions to two misdemeanor convictions. Counsel declares that he is also attempting to vacate the applicant's three misdemeanor convictions.

An alien who has been convicted of a felony or of three or 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 Act.

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 misdemeanor offenses in the Municipal Court of Los Angeles, California, Van Nuys District:

- [REDACTED] filed on August 29, 1989 for a violation of section 647(A), Disorderly Conduct: Lewd Act, of the California Penal Code, which resulted in the applicant being convicted on December 18, 1995.
- Court Case [REDACTED] filed on December 14, 1995 for a violation of section 647(A), Disorderly Conduct: Lewd Act, of the California Penal Code, which resulted in the applicant being convicted on December 18, 1995.
- Court Case [REDACTED] on March 17, 2003 for a violation of section 20002(A), Hit and Run with Property Damage, of the California Vehicle Code, which resulted in the applicant being convicted on May 2, 2003.

Counsel's contention that the applicant remained eligible to adjust to permanent resident status under the provisions of the LIFE Act because the petty theft exception contained in section 212(a)(2)(A)(ii)(II) of the Act applied to the applicant's criminal convictions is without merit. The petty theft exception cited by counsel applies only to alien's who have been found to be **inadmissible** under section 212(a)(2)(A)(i)(I) of the Act as a result of having been convicted (or which the alien admits having committed or which the acts that the alien admits having committed constituted the essential elements) of a crime involving moral turpitude. In the present case, the applicant has **not** been found to be inadmissible under any section of the Act, but instead is ineligible to adjust to permanent residence under the provisions of the LIFE Act as a result of his three misdemeanor convictions pursuant to 8 C.F.R. § 245a.18(a)(1).

Even if the counsel were to obtain orders vacating the applicant's three 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 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

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.