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**U.S. Citizenship
and Immigration
Services**

L2

FILE:

Office: Los Angeles

Date: **MAY 10 2007**

IN RE:

Applicant:

PETITION: 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. 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 "Robert P. 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 as he concluded that the applicant was inadmissible under section 1140(c)(2)(D)(ii) of the LIFE Act, because he had been convicted of three misdemeanors in the United States.

On appeal, counsel asserts that applicant's two misdemeanor convictions for violating sections 23152(a) and 23152(b) of the California Vehicle Code arose out of a single scheme of criminal misconduct thereby rendering the two convictions as a single offense. Counsel contends that the holdings reached in a variety of court cases supported such a construction.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Immigration and Nationality Act (INA). Section 1140(c)(2)(D)(i) of the LIFE ACT.

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. *See* section 1140(c)(2)(D)(ii) of the LIFE Act and 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).

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).

A review of the record reveals that the applicant was convicted of the following three misdemeanor offenses in the San Bernardino County Municipal Court, County of San Bernardino, State of California:

- A violation of section 23152(a) of the California Vehicle Code, Driving a vehicle under the influence of alcohol or drug, on January 22, 1992;
- A violation of section 23152(b) of the California Vehicle Code, Driving a vehicle under the influence of an alcoholic beverage with 0.08 percent or more, by weight, of alcohol in his or her blood, on January 22, 1992; and,
- A violation of section 23103(a) of the California Vehicle Code, Reckless driving, on October 28, 1992.

Counsel's asserts that the effect of the applicant's three misdemeanor convictions is somehow diminished because two of these convictions arose out of the same incident. Counsel contends that this assertion is supported by the holdings reached in *Matter of C-*, 9 I&N Dec. 524, Interim Decision (BIA) 1962, *Nason v. Immigration and Naturalization Service*, 394 F.2d 223 (2nd Cir. 1968), *Wood v. Hoy*, 266 F.2d 825 (9th Cir. 1959), *Barrese v. Ryan*, 203 F. Supp. 880 (D. Conn. 1962), *Jeronimo v. Murff*, 157 F. Supp. 808 (S.D. N.Y. 1962), and *Gonzalez-Sandoval v. United States Immigration and Naturalization Service*, 910 F.2d 614, (9th Cir. 1990). While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Immigration and Nationality Act (Act) and the case law cited by counsel, this determination has no bearing on an applicant's eligibility for adjustment to permanent residence under the provisions of the LIFE Act.

It is a well-accepted principle in criminal law that an individual can be charged with and convicted of multiple criminal offenses as a result of an act or actions in a single incident. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with three separate counts and he was convicted of three separate offenses. Black's Law Dictionary, 353 (7th Ed., 1999), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of three separate and distinct misdemeanor offenses.

The applicant is ineligible to adjust to permanent resident status because of his three misdemeanor convictions pursuant to both section 1140(c)(2)(D)(ii) of the LIFE Act and 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 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.