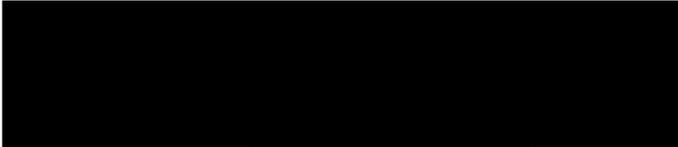


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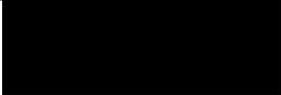
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FILE:



Office: LOS ANGELES

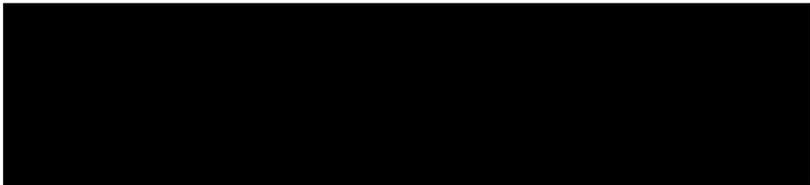
Date:

APR 01 2008

MSC 02 247 63270

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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 in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant had been convicted of two misdemeanor crimes involving moral turpitude, which made him ineligible for LIFE legalization.

On appeal the applicant asserts that his two convictions have been expunged by court orders, thereby removing the bar to his legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. *See* section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

In addition, section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA), which is generally applicable to all aliens seeking admission to the United States, specifies that an alien is inadmissible if (s)he has been convicted of a “crime involving moral turpitude” (other than a purely political offense), or if (s)he admits having committed such crime, or if (s)he admits committing an act which constitutes the essential elements of such crime.

Under the LIFE Act regulations a crime involving moral turpitude cannot be waived as a ground of inadmissibility, and therefore bars an alien absolutely from admission to the United States. *See* 8 C.F.R. § 245a.18(a)(2)(i).

The record includes certified final court dispositions from the Superior Court of Los Angeles County, State of California, confirming that the applicant was convicted of two misdemeanors under section 484(a) of the California Penal Code, for theft of personal property, in the years 1997 and 2000. He was sentenced in each case to three years probation. Theft of personal property is a crime involving moral turpitude, and the applicant’s conviction thereof makes him ineligible for adjustment of status to legal permanent resident under the LIFE Act. Accordingly, the district director denied the application on September 23, 2005.

On appeal the applicant asserts that his misdemeanor convictions have been expunged by the court, which means that he no longer stands convicted of any crime involving moral turpitude. The certified final court dispositions in the record confirm that in July 2005 judicial orders were issued which vacated the applicant’s two convictions and dismissed the complaints pursuant to section 1203.4(a) of the Penal Code. This code section gives California judges the discretion to

expunge a conviction after the defendant is no longer under probation, but it does not represent a finding of innocence and the conviction can be pleaded and proved anew if the defendant is later prosecuted for another offense.

Section 101(a)(48)(A) of the INA, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" as follows:

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.

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. *See Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. Unless it vacates a conviction on the merits, a state rehabilitative action is of no effect in determining whether an alien is considered convicted for immigration purposes. *See Matter of Roldan, id.* The record does not indicate that either of the applicant's two convictions was vacated on the merits.

Because of his two convictions for crimes involving moral turpitude, the applicant is ineligible under section 212(a)(2)(A)(i)(I) of the INA, and 8 C.F.R. § 245a.18(a)(2)(i), for adjustment to permanent resident status under the LIFE Act. Accordingly, the district director's denial of the application for LIFE legalization will be affirmed on this ground.

An alien applying for adjustment of status under the provisions of section 1104 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 Immigration and Nationality Act, and is otherwise eligible for adjustment of status. *See* 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.