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U.S. Citizenship  
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Services

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FILE:

MSC 02 224 60237

Office: LOS ANGELES

Date:

**APR 25 2008**

IN RE:

Applicant:

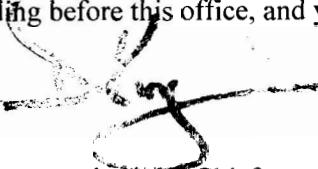
APPLICATION:

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 your case 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, and is now before the Administrative Appeals Office on appeal. The AAO will dismiss the appeal.

The district director denied the application based on the applicant's failure to provide a certified court disposition of an arrest that occurred on January 1, 1986. On appeal, the applicant contends that the records pertaining to the arrest have been destroyed, and consequently alleges that he was unable to comply with the director's request. The applicant claims that he has not been convicted of three or more misdemeanors and is therefore eligible to adjust status to permanent resident.

The regulation at 8 C.F.R. § 254a.2(c)(1) defines ineligible aliens, in part, as "an alien who has been convicted of a felony or three or more misdemeanors."

On or about January 3, 1987, the applicant was arrested by the Inglewood Police Department and was charged with the following offenses:

Count 01:	23152(A)	VC	MISD	UND INFLNCE ALCHL/DRUG IN VEH.
Count 02:	23152(B)	VC	MISD	.08% MORE WGHT ALCHL DRIVE VEH.
Count 03:	20002(A)	VC	MISD	HIT AND RUN/PROPERTY DAMAGE
Count 04:	14601.1(A)	VC	MISD	DRIVING WITH SUSPENDED LICENSE

On April 9, 1987, the applicant was convicted of Count 02, and Counts 01, 03 and 04 were dismissed. (Docket No. [REDACTED])

With regard to the remainder of the applicant's criminal history, the record remains unclear. In his interview, the applicant, through an interpreter, claimed that he was arrested in 1981, 1986 and 1987. As the necessary documentation for the 1987 arrest is contained in the file, the AAO will focus on the arrests during 1981 and 1986.

A search of FBI records on August 5, 2005 yielded the following information regarding the above arrests.

- (1) The applicant was arrested on or about April 29, 1981 by the Los Angeles Police Department (Case No. [REDACTED]) and charged with assault with a deadly weapon. According to the record, no formal charge was made against the applicant.
- (2) The applicant was arrested on January 3, 1986 by the Inglewood Police Department (Case No. [REDACTED]) and charged with (1) assault with a deadly weapon other than a firearm or great bodily injury force; and (2) hit and run resulting in property damage.

The director requested certified and original court dispositions demonstrating the outcome of these arrests. In response, the applicant submitted photocopies of two separate letters from the Deputy Clerk of the Los Angeles Superior Court dated August 1, 2005. Both letters indicate that with regard to [REDACTED] the office has no records. The documents further contend that all records have been destroyed pursuant to Government Codes 68152 and 68153.

The director found these documents to be insufficient, specifically since they were photocopies and not original documents as had been specifically requested. Furthermore, the director noted that the FBI record stated that the applicant had used the name "[REDACTED]" during the 1986 arrest;

however, the court records were not searched under this name. The director consequently issued a notice of intent to deny (NOID) based on this issue.

In response, the applicant submitted court records for an additional arrest in 1986 that had not been previously disclosed. The documents indicated that on or about April 4, 1986, the applicant was arrested and charged with the following:

Count 01:	14601.1(A)	VC	MISD	DRIVING WITH SUSPENDED LICENSE
Count 02:	21453(A)	VC	INF	CIRCULAR RED SIGNAL SHALL STOP

The record further indicates that on October 13, 1993, a bench warrant was recalled and the case was dismissed.

As discussed above, the FBI report confirmed that the charges incident to the April 29, 1981 arrest were not pursued by the District Attorney's office. Therefore, the remaining issue on appeal is the January 3, 1986 and the two counts brought against the defendant therein.

Although the director specifically requested the final court disposition with regard to these charges, the applicant failed to produce such evidence. The applicant submitted a photocopy of a letter from the Deputy Clerk of the Los Angeles Superior Court, indicating that while a criminal history search was conducted on behalf of the applicant, no records were found. However, this document fails to establish the outcome of the applicant's arrest on January 3, 1986.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). 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).

Since the applicant failed to submit documentation pertaining to the final court disposition of the January 3, 1986 arrest and ensuing charges, the applicant's actual number of misdemeanor convictions cannot be determined. On appeal, the applicant contends that "he was [at] most convicted of two misdemeanors." The AAO disagrees. It is undisputed that the applicant was convicted of one misdemeanor offense on April 9, 1987. If he was in fact convicted of both counts pertaining to the January 3, 1986 arrest, he would thus have a total of three *misdemeanor* convictions and be an ineligible alien under 8 C.F.R. § 245a.3(c). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14).

Additionally, it is noted that the applicant used a number of aliases during the requisite period and alternates his surname and middle names. The AAO suspects that it is possible that the disposition of the January 3, 1986 arrest was not produced because the name the applicant provided under arrest, according



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to the FBI record, was not the name searched by the court clerk on August 1, 2005. Moreover, despite the director's specific requests on two occasions, the applicant failed to provide an original copy of the August 1, 2005 letter from the clerk's office. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant was arrested on January 3, 1986 and charged with two misdemeanors whose disposition remains unclear. Since the AAO is unable to determine whether the applicant is an eligible alien, and the applicant has failed to supplement the record with credible evidence demonstrating his eligibility, the application must be denied.

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