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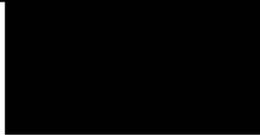
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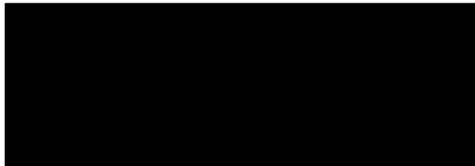


Office: LOS ANGELES  
consolidated herein]  
consolidated herein]

Date: **AUG 01 2008**

MSC 02 239 61915

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:



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 director denied the application because the applicant failed to respond to a request that he provide final original court certified dispositions of all of his arrests.

On appeal, the applicant submits a brief statement.

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 his Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on May 27, 2002. At the time of filing his application, the applicant indicated that he had never been arrested and had never been deported, or removed from the United States at government expense. However, a criminal history check conducted in connection with the applicant’s Form I-485 revealed that

he had been processed for deportation on May 17, 1980, in Laredo, Texas, and had been arrested for Petty Theft by the Sheriff's Office in Santa Ana, California, on March 14, 1985.<sup>1</sup>

On July 15, 2003, the applicant was requested to submit the final original court certified disposition of his arrest in Santa Ana. He was also requested to submit evidence of the identification of the affiants who had provided affidavits in support of his application, and evidence that they were present in the United States during the period that they had sworn to in their affidavits.

At an interview on May 3, 2004, the applicant was again requested to submit the original final court certified dispositions of all of his arrests. In response, the applicant provided only the police report of his arrest in Santa Ana.

On September 23, 2006, the applicant was again interviewed in connection with his application. At the time of his interview, the applicant stated that he had been deported in 1980, was out of the United States, and returned in January 1985. He also stated that he had been charged with Petty Theft in 1985, and two "DUI's" – in 1997 and 2001.

In a Notice of Intent to Deny (NOID), also dated September 23, 2006, the district director denied the application because the applicant failed to respond to her requests for evidence and provided the applicant 30 days in which to respond.

The district director denied the application, in a Notice of Denial (NOD), dated February 6, 2007. The applicant filed a timely appeal from that decision on March 2, 2007.

On appeal, the applicant asserts that he is sure that he has complied with all of the notices he received and is in the process of trying to obtain copies from the different service providers who helped him answer the requests for evidence. The applicant indicates that he is sending a brief and/or evidence to the AAO within 30 days of filing the appeal. To date, no additional documentation has been received; therefore, the record is considered complete.

A review of the record reveals the following information regarding the applicant's criminal history:

1. On March 14, 1985, the applicant was arrested by the Sheriff's Office in Santa Ana, California, and charged with Petty Theft (agency case # [REDACTED]). A report from the Federal Bureau of Investigations (FBI) indicates that the applicant was convicted of the charge in the Municipal Court of Westminster, California, and sentenced to 24 months probation and three days in jail. Although there is an Orange County Jail arrest report contained in the record, the applicant has failed to provide the actual court disposition of this arrest/conviction as was specifically requested by the district director.

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<sup>1</sup> The record reflects that the applicant was apprehended near Laredo, Texas, on or about May 16, 1980. On May 17, 1980, he was ordered deported from the United States by an Immigration Judge in San Antonio, and on May 28, 1980 he was deported from Harlingen, Texas, via Mexicana Airline.

2. On April 20, 1998, the applicant was charged with violations of California Vehicle Code section [REDACTED] Driving Under Influence of Alcohol/Drugs, and section [REDACTED] Suspended or Revoked License DUI Alcohol/Drugs. He was convicted of both misdemeanor charges on June 3, 1998, and sentenced to 60 days in jail (County of Orange docket report case [REDACTED] M A relates).
3. On July 15, 1999, the applicant was charged with a violation of California Vehicle Code section 14601.2A, Suspended License, to which he pled guilty and was sentenced, on July 28, 1999, to 30 days in jail (County of Orange docket report case [REDACTED] A relates).

The applicant is ineligible for adjustment of status under the LIFE Act due to his having been convicted of three misdemeanor offenses committed in the United States. 8 C.F.R. § 245a.18. Consequently, the district director's decision to deny the application will be affirmed.

Beyond the decision of the district director, the applicant has failed to establish his entry into the United States prior to January 1, 1992, and continuous unlawful presence in the United States since then through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An alien applying for adjustment of status under the LIFE Act has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245A of the Act. The applicant has failed to meet this burden.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for adjustment of status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245A of the Act. The applicant has failed to meet this burden.

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