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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: DEC 3 0 2008

MSC-02-243-67802

IN RE: Applicant: [redacted]

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 on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the 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 based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because she had been convicted of four felonies in the United States. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant represents herself on appeal. The applicant argues that her multiple felony convictions were reduced to misdemeanors and ultimately dismissed pursuant to section 1203.4 of the California Penal Code. The applicant maintains that she is eligible for benefits under the terms of the LIFE Act because she no longer has disqualifying criminal convictions.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(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).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for temporary resident status. But, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception. *See* 8 U.S.C. § 1182(a)(2)(A)(ii). A CIMT will meet the petty offense exception if "'the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months.'" *Lafarga v. INS*, 170 F.3d 1213, 1214-15 (9th Cir. 1999) (quoting 8 U.S.C. § 1182(a)(2)(A)(ii)(II)); *see also Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843-46 (9th Cir. 2003). For the purpose of the petty offense exception, "'the maximum penalty possible' . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed." *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 835 (9th Cir. 2008) (offense of bribery of a public official did not qualify for petty offense exception where statutory maximum for offense was 15 years). The youthful offender exception will apply if: the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years

before the date of application for a visa or other documentation and the date of application for admission to the United States. 8 U.S.C. § 1182(a)(2)(A)(ii)(I.)

In this case, the record indicates that on November 18, 1996, the applicant was charged with three felony counts of violating section 118 of the California Penal Code – *Perjury*, three felony counts of violating section 532A (1) of the California Penal Code – *Making False Financial Statements*, and one felony count of violating section 487(A) of the California Penal Code – *Grand Theft*. (Docket No. [redacted]). The applicant pleaded not guilty to the perjury charges, but pleaded guilty to all three counts of making a false financial statement, as well as to the count of grand theft. Thus, the applicant pleaded guilty on December 12, 1996 to four felony counts of violating section 532A (1) of the California Penal Code – *Making False Financial Statements*, and section 487(A) of the California Penal Code – *Grand Theft*. The remaining perjury charges were dismissed pursuant to the terms of the plea agreement.

On January 23, 1997, the applicant was sentenced to three years probation, 180 days of electronic monitoring, and ordered to pay restitution in the amount of $17,000 and a fine of $5,000 for "investigative expenses." Thereafter, the applicant's probation was extended to January 23, 2002 pursuant to court order and at the behest of the applicant's probation officer. On April 25, 2002, the applicant's motion to reduce the felony convictions to a misdemeanor and to ultimately dismiss the convictions pursuant to section 1203.4 of the California Penal Code was granted. Hence, the applicant now argues that she remains eligible for benefits under the LIFE Act.

The AAO concludes that the applicant remains ineligible to adjust status to one of permanent residence because her convictions remain valid for immigration purposes. Under the current statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 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 by operation of a state rehabilitative statute. Any subsequent action that overturns a state conviction, other than on the merits of the case, is ineffective to expunge a conviction for immigration purposes. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999).

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains "convicted" for immigration purposes. Furthermore, the applicant's convictions for making false financial statements and grand theft are considered crimes involving moral turpitude for which no waiver exists, except in limited circumstances cited above and not applicable here. *See, e.g., Rashtabadi v. INS*, 23 F.3d 1562, 1568 (9th Cir. 1994) (California conviction for grand theft is a CIMT).

We therefore conclude that the applicant is ineligible for permanent resident status pursuant to the terms of the LIFE Act, as she cannot establish that she is otherwise admissible to the United States.[1] The AAO therefore need not examine whether the applicant has established the requisite residency requirements.

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

[1] Congress has provided no waiver for a CIMT as a ground of inadmissibility.