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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 087 60701

Office: NEW YORK

Date: NOV 06 2008

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 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.

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 Director, New York, 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 had not met his burden of proof to establish eligibility to adjust to permanent resident status under the provisions of the LIFE Act. Specifically, the director noted discrepancies between the applicant's oral testimony at his interview and the documentary evidence contained in the records. The director also noted that the applicant had been convicted of six misdemeanors in the United States. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant represents himself on appeal. He argues that "there is plenty of evidence showing my eligibility for adjustment status [sic] under the LIFE Act." The applicant states that the "Service did not give adequate weight to the evidence I submitted."

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. 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).

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.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

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).

The record contains certified court documents that reflect the applicant has been convicted of the following misdemeanor offenses in the Criminal Court of the City of New York:

- A conviction on September 23, 1991 for a violation of section 240.20 of the New York Criminal Code, *disorderly conduct*. The applicant paid a fine of \$25.00. Docket No. [REDACTED]
- A conviction on November 21, 1991 for a violation of section 240.20 of the New York Criminal Code, *disorderly conduct*. This conviction date reflects two separate offense dates: September 21, 1991 and October 31, 1991. The applicant received a conditional discharge of one year for the September 21, 1991 offense and paid a fine of \$50.00 for the October 31, 1991 offense. Docket Nos. [REDACTED] and [REDACTED]
- A subsequent arrest on August 20, 1992 for a violation of section 20.453 of the New York Criminal Code, *disorderly conduct*. This charge was dismissed on December 2, 1992, under the New York state right to speedy trial provisions. Docket No. [REDACTED]
- A conviction on February 18, 1993 for a violation of section 240.20 of the New York Criminal Code, *disorderly conduct*. The applicant was sentenced to pay a fine of \$50.00. Docket No. [REDACTED]
- A conviction on June 22, 1993 for a violation of section 240.20 of the New York Criminal Code, *disorderly conduct*. The applicant was sentenced to pay a fine of \$50.00. Docket No. [REDACTED]
- A conviction on August 26, 1993 for a violation of section 240.20 of the New York Criminal Code, *disorderly conduct*. The applicant was sentenced to a term of imprisonment. Docket No. [REDACTED]
- A conviction on June 6, 1995 for a violation of section 240.20 of the New York Criminal Code, *disorderly conduct*. The applicant received a conditional discharge of one year. Docket No. [REDACTED]

In the record before the AAO, the applicant was sentenced variously to pay fines, to periods of conditional discharge for one year, and to imprisonment for an indeterminate period for one of the offenses. The applicant's appeal does not address the immigration consequences of his convictions. New York law provides that the conviction for disorderly conduct is considered a "violation" punishable by a maximum sentence of imprisonment of 15 days. New York Penal Code Section 240.20, and New York Penal Code Article 70.15. As the maximum sentence is more than 5 days imprisonment, the crime is considered a misdemeanor under immigration law. 8 C.F.R. § 245a.1(p) & 8 C.F.R. § 245a.1(o). Federal regulations under 8 C.F.R. § 245a.11 do not specify a particular *type* of misdemeanor – any three misdemeanor convictions are an automatic disqualification for adjustment to permanent resident status under the provisions of the LIFE Act.

The record before the AAO clearly establishes that the applicant has six misdemeanor convictions and there is no evidence that any of the judgments of conviction have been vacated for underlying procedural

defects having to do with the merits of the case. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). Even if the applicant were to obtain orders vacating the applicant's three misdemeanor convictions, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan, id.* Therefore, the applicant remains "convicted" of the three misdemeanor offenses cited above for immigration purposes

Because of his six misdemeanor convictions, the applicant is ineligible for adjustment to permanent resident status under the LIFE Act pursuant to 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 INA, 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.