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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: [REDACTED]
MSC 02 004 62516

Office: NEW YORK, NEW YORK

Date:

MAR 31 2009

IN RE: Applicant: [REDACTED]
a.k.a. [REDACTED]
a.k.a. [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 forwarded to the U.S. Citizenship and Immigration Services National 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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, New York, New York. The decision 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 submit sufficient evidence to establish that he had resided continuously in the United States throughout the statutory period as required under section 1104(c)(2)(B) of the LIFE Act. The director specified, for example, that the statements and affidavits in the record submitted to demonstrate that the applicant resided continuously in the United States during the statutory period lacked credibility because the applicant failed to include copies of any documentary evidence that the individuals who wrote the statements were themselves in the United States during the statutory period.

On appeal, the applicant did not address issues raised by the director in the Notice of Intent to Deny and Notice of Decision. Instead, the applicant asserted that the evidence of record established that he is eligible for the benefit sought in this matter. The applicant did not allege any specific legal or factual error in the director's decision and did not submit additional evidence. As of the date of this decision, no additional evidence has been submitted. The AAO will consider the record complete.

Any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. 8 C.F.R. § 103.3(a)(3)(iv). A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence and has not addressed the basis for denial. The appeal must therefore be summarily dismissed.

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, the AAO finds that the applicant is not eligible for permanent resident status under the late legalization provisions of the LIFE Act because he has been convicted of a felony.

According to the record, the New York City Police Department arrested the applicant on June 8, 1993 and charged him with: criminal possession of a defaced/concealed weapon and criminal possession of a loaded firearm. On October 28, 1993, at the Richmond County Superior Court, State of New York, in the case having [REDACTED], the applicant pled guilty to and was convicted of attempted criminal possession of a weapon/loaded firearm under New York Penal Law (NYPL) §§ 110 and 265.01, Subsection 4, a class E felony. The judge ordered the applicant to pay a \$250 fine, and placed him on probation for five years.

An applicant who has been convicted of a felony or of three or more misdemeanors committed in the United States is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1). A misdemeanor includes any offense which is punishable by imprisonment of a term of one year or less, except that it shall not include offenses for which the maximum sentence is five days or less. *See* 8 C.F.R. § 245a.1(o). A felony is a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any, except that when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less. *See* 8 C.F.R. § 245a.1(o).

A conviction of attempted criminal possession of a weapon/loaded firearm is potentially punishable by a term of more than one year and is defined by the State of New York as a class E felony. *See* NYPL § 70.02(2)(c)(which indicates that the sentence for class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in subdivision four, five, seven or eight of section 265.02 must be a sentence to a determinate period of imprisonment, or, in the alternative, a definite sentence of imprisonment for a period of no less than one year, except that the court may impose, under certain circumstances, any other sentence authorized by law upon a person who has not been convicted in the previous five years of a class A misdemeanor.)

Thus, the applicant has been convicted of a felony and is not eligible for the benefit sought in this matter. The appeal is dismissed on this basis as well.

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