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**U.S. Citizenship
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FILE:



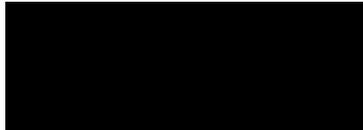
Office: LOS ANGELES

Date:

FEB 18 2005

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 on appeal. The appeal will be dismissed.

The district director concluded that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director also concluded that the applicant had been convicted of at least three misdemeanors in the United States. Accordingly, the director denied the application.

On appeal, the applicant asserts that his criminal record is now clean, as his convictions have been expunged. The applicant states that he does not understand why, after residing in the United States of over 23 years, he is being denied permanent resident status.

Counsel submitted a Freedom of Information Act request that has been complied with by Citizenship and Immigration Services.

The regulation at 8 C.F.R. § 245a.18(a) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to LPR status.

"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 the term "felony" of this section. 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.

In response to a Notice of Intent to Deny issued on March 12, 2003, the applicant submitted a Form H-6 from the Department of Motor Vehicles and several court dispositions that reflect the applicant's criminal history in the State of California:

- 1) On November 7, 1992, the applicant was arrested for driving with .08 percent or more alcohol in the blood. On December 29, 1992, the applicant was convicted of this misdemeanor offense. Case no. [REDACTED]
- 2) On January 1, 1994, the applicant was arrested for driving while privilege is suspended for driving under the influence. On February 8, 1994, the applicant was convicted of this misdemeanor offense. On May 14, 2003, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
- 3) On October 15, 1994, the applicant was arrested for driving while privilege is suspended for driving under the influence. On February 8, 1994, the applicant was convicted of this misdemeanor offense. Case no. [REDACTED]
- 4) On September 13, 1996, the applicant was arrested for driving while privilege is suspended for driving under the influence. On December 9, 1996, the applicant was convicted of this misdemeanor offense. On May 14, 2003, the conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
- 5) On October 24, 1999, the applicant was arrested for driving under the influence, driving with .08 percent or more alcohol in the blood, and driving while privilege is suspended or revoked. On December 27, 1999, the applicant was convicted of the three misdemeanor offenses. On May 14, 2003, the convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), 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. The Board of Immigration Appeal (BIA) found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. Thus, if a court with jurisdiction vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. If, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains "convicted" for immigration purposes. *Matter of Pickering*, 23 I&N 3493 (BIA 2003). Therefore, despite the expungements of the applicant's convictions, the applicant remains convicted, for immigration purposes, of the five offenses above.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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 amenability to verification. 8 C.F.R. § 245a.12(e).

In an effort to establish continuous residence from before January 1, 1982 through May 4, 1988, the applicant submitted the following:

- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Anaheim California since 1980. [REDACTED] asserted that the applicant resided with him until he moved to Carpinteria, California.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles, California since December 1981
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles, California since November 1981.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Anaheim, California during 1982 and 1983.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Anaheim, California during 1983.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Eagle Rock, California since 1984.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Carpinteria, California since 1984.

- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Carpinteria, California during 1986 and 1987.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles during 1987 and 1988.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles, California during 1988.
- Several receipts issued in 1985 and 1986.

The applicant also provided an employment letter dated June 8, 1990 which purports to affirm the applicant's employment from March 20, 1982. However, the letter appears to have been altered as the employment date appears to have been typed in at a later time, and part of a sentence that refers to the applicant's employment termination has been obliterated. In addition, the applicant provided an Application for Employment from ALFCO; however, the date the application was prepared also appears to have been altered. Therefore, these documents from ALFO have no evidentiary weight or probative value.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Nevertheless, the applicant is ineligible for the benefit being sought due to his seven misdemeanor convictions. 8 C.F.R. § 245a.11(1) and 8 C.F.R. § 245a.18(a). Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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