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U.S. Citizenship
and Immigration
Services



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FILE: [Redacted]

Office: Houston

Date: JAN 14 2005

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wieman, 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application as he concluded that the applicant was inadmissible under section 1140(c)(2)(D)(ii) of the LIFE Act, because he had been convicted of a felony and two misdemeanors in the United States.

On appeal, the applicant contends that his criminal convictions had taken place some time ago. The applicant requests that he be allowed to remain in this country to support his family.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT. An alien who has been convicted of a felony or three or more misdemeanors in the United States is inadmissible and, therefore, ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act.

"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).

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).

The record reveals the following regarding the applicant's criminal history:

- A conviction for the misdemeanor offense of assault with bodily injury in Harris County, Texas on September 1, 1992;
- A conviction for the misdemeanor offense of driving while intoxicated in Harris County, Texas on August 11, 1995; and,
- A conviction for a violation of 8 U.S.C. § 1324(a)(1)(B), Transporting Illegal Aliens, a felony offense in the United States District Court, Northern District of Texas, Dallas Division on October 4, 1993.

The applicant is ineligible because of his felony conviction. 8 C.F.R. § 245a.18(a)(1). Therefore, the applicant is ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act. 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.


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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.