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

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FILE:



Office: LOS ANGELES

Date:

JAN 12 2006

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.

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 been convicted of a felony in United States, and accordingly, denied the application.

On appeal, the applicant submits a court document from the San Bernardino County Superior Court, which reduced the felony conviction to a misdemeanor.

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.

"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.

The record reflects that on June 11, 2001, the applicant was arrested by the Sheriff's Office in San Bernardino, California for violating section 10980(C)(2) W&I, a felony. The applicant was subsequently convicted of this felony offense. The applicant filed a motion to reduce the felony conviction to a misdemeanor. On June 24, 2004, the motion was granted. [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 reduction of the applicant's conviction, the applicant remains convicted, for immigration purposes, of the felony offense above.

The applicant is ineligible for the benefit being sought due to her felony conviction. 8 C.F.R. § 245a.11(d)(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.