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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: [Redacted]
MSC 03 249 62013

Office: NATIONAL BENEFITS CENTER

Date: JUL 26 2006

IN RE: Applicant: [Redacted]

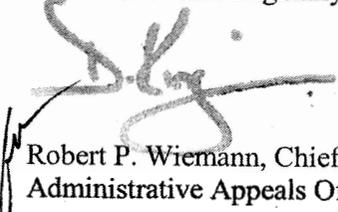
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000)

ON BEHALF OF APPLICANT:

[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director concluded the applicant had been convicted of a felony and was therefore inadmissible into the United States pursuant to section 212(a) of the Immigration and Naturalization Act (INA) as set forth in 8 C.F.R. § 245a.18. Accordingly, on April 21, 2004, the director denied the application for adjustment of status as a permanent resident.

We note that the director failed to issue a Notice of Intent to Deny as required by 8 C.F.R. § 245a.20(a)(2). We note further that the director issued a second Notice of Decision on September 8, 2004, in which he concluded that the applicant had been convicted of three misdemeanors. The decision was issued after the applicant filed his appeal, and the record does not reflect that the director withdrew his earlier decision. However, as we are sustaining the appeal, these deficiencies in the record are not prejudicial to the applicant.

On appeal, counsel asserts that the applicant has been convicted of only two misdemeanors. Counsel indicated on the Form I-290B, Notice of Appeal to the Administrative Unit, that a brief and/or additional evidence would be submitted within 30 days. As of the date of this decision, however, more than two years after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

The applicant's criminal history reveals that he has been convicted of two misdemeanor charges of driving while intoxicated (DWI) for which he received sentences of confinement for 90 days and 60 days. The applicant was also convicted of a charge of violating the Texas child seatbelt law. According to court documents, violation of the child seatbelt law is a class "C" misdemeanor, and the applicant was ordered to pay a fine of \$200. According to the Texas Penal Code at Title 3, section 12.23, a conviction of a class "C" misdemeanor is punishable by a fine not to exceed \$500.

The regulation at 8 C.F.R. § 245a.1(o) provides that:

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. § 245.1(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.

As a class "C" misdemeanor under Texas law is not punishable by confinement, the applicant's conviction is not considered to be a conviction of a misdemeanor for purposes of the LIFE Act. The record reflects that for the purpose of the LIFE Act, the applicant has been convicted of two misdemeanor charges of DWI. Therefore, the applicant is not inadmissible into the United States pursuant to 8 C.F.R. § 245a.18.

The record reflects that the applicant has sufficiently established that he timely applied for class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000. It must now be determined whether the applicant is otherwise eligible for permanent resident status under section 1140 of the LIFE Act. Accordingly, the matter will be forwarded to the appropriate district office for further processing and adjudication of the LIFE Act application.



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ORDER: The appeal is sustained.

