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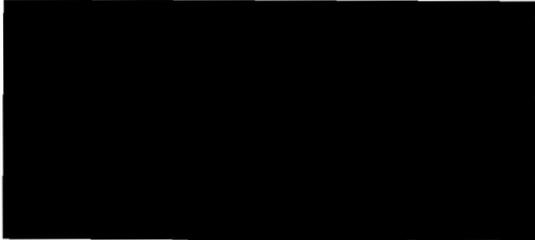
U.S. Department of Homeland Security
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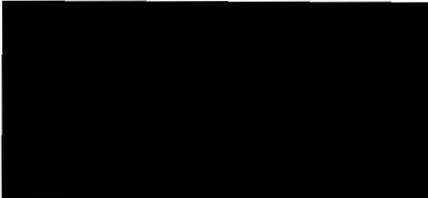


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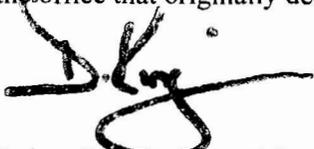
IN RE: Applicant: [Redacted]

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:



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 District Director, Houston, Texas 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 the United States, and accordingly, denied the application.

On appeal, counsel puts forth a brief disputing the director's finding that there are no waiver provisions available for the applicant.

An alien is inadmissible to the United States if he or she has been convicted of a felony or three misdemeanors committed in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act.

The regulation at 8 C.F.R. § 245a.18(a)(1) 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 lawful permanent resident 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. 8 C.F.R. § 245a.1(p).

The record reflects that on January 22, 1995, the applicant was charged in the Harris County District Court in Houston, Texas with injury to a child/reckless/mental injury, a Class 2 felony. On June 7, 1995, the charge was dismissed. Case no. [REDACTED]

The record also reflects on August 29, 2002, the applicant was charged in the Harris County District Court in Houston, Texas with evading arrest with a motor vehicle, a violation of section 5 of Article 42.12 Texas Code of Criminal Procedure, a felony. On September 13, 2002, the adjudication of guilt was deferred, and the applicant was placed on probation for four years. Case no. [REDACTED]

Section 101(a)(48) (A) of the Act defines "conviction" with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilty has been withheld, where --

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the person's liberty to be imposed.

The record shows the applicant pled guilty to the felony charge and his liberty was restrained in that he was placed on probation. Therefore, the applicant has been convicted within the meaning of section 101(a)(48)(A) of the Act.

Counsel, on appeal, asserts:

The District Director erred in advising the applicant that there are no waiver provisions available to him. The Code specifically provides, at section 245a.18(c), subsections (1) and (2) a special rule for waiver of inadmissibility grounds for LIFE legalization applicants for humanitarian purposes, to ensure family unity, or when the granting of such waiver is otherwise in the public interest.

* * *

Such a waiver is particularly equitable in the present case, as the convicting authority-the State of Texas- does not recognize deferred adjudication as a conviction for any purposes.

* * *

Although the District Director was correct in finding the applicant in eligible for adjustment under 8 C.F.R section 245a.18(a), he erred in denying the applicant the opportunity to apply for waiver as provided in subsection (c).

The regulation at 8 C.F.R. § 245a.18(c)(1) is a special rule for waiver of inadmissibility grounds for LIFE Legalization applicants under sections 212(a)(9)(A) and 212(a)(9)(C) of the Immigration and Nationality Act (the Act). Section 212(a)(9) of the Act pertains to aliens that have been previously removed. The special rule, however, is not applicable here as the record contains no evidence that the applicant had been previously removed. Likewise, 8 C.F.R. § 245a.18(c)(2) is not applicable as the applicant's conviction does not apply under this section. Within the LIFE Act, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

The applicant is ineligible for the benefit being sought due to his felony conviction. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). The applicant is also inadmissible under section 1104(c)(2)(D)(ii) of the LIFE Act. 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.