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U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: NATIONAL BENEFITS CENTER

Date: JUN 07 2007

MSC 03 252 62825

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:

Self-represented

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 on appeal. The appeal will be dismissed.

The director determined that the applicant was inadmissible under section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C), and accordingly, denied the application.¹

On appeal, the applicant submitted a letter from the Orange County Superior Court in California, which indicated that criminal records for the period of 1995 through 2004 were no longer maintained pursuant to Government Code § 68152(d). The applicant asserted that a brief would be submitted within 30 days. Subsequently, the applicant submitted an expungement order for her drug convictions.

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).

An alien is inadmissible if she has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C).

According to an FBI record based upon the applicant's fingerprints, on December 13, 1991, the applicant was arrested by the Huntington Beach Police Department in California for possession of controlled substance for sale. The applicant was convicted in the Orange County Superior Court of violating section 11351 H&S, possession of a controlled substance for sale and section 11359 H&S, possession of marijuana for sale, both felonies. The applicant was sentenced to serve 39 days in jail and placed on probation for three years.

The director determined that there was reason to believe that the applicant was drug trafficker and denied the application.

We note that an actual conviction of drug trafficking or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act; an alien may be inadmissible if an immigration officer knows or has reason to believe that the alien is or has been an illicit trafficker in drugs. *Matter of Rico*, 16 I&N Dec. 191 (BIA 1977).

However, as the record does not contain the police report, which gives a detailed narrative of the circumstances that led up to the arrest, the AAO cannot find the applicant inadmissible under section 212(a)(2)(C) of the Act.

¹ At the time the Form I-485 was filed, the applicant was given alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file ([REDACTED]) all the documentation from the Form I-485 application was consolidated into the prior A-file.

On appeal, the applicant submits an expungement order dated May 31, 2005, in accordance with section 1203.4 PC, for her felony convictions of sections 11351 H&S and 11359 H&S. Case no. C-90474.

Because the applicant was convicted of crimes involving controlled substances, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

In addition, under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, 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. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The Board of Immigration Appeals (BIA) revisited the issue in *Matter of Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002) and concluded that Congress did not intend to provide any exceptions from its statutory definition of a conviction for expungement proceedings pursuant to state rehabilitative proceedings.

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the 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. The BIA reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains "convicted" for immigration purposes.

It is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all Citizenship and Immigration Services offices.

Therefore, pursuant to the above precedent decisions, no effect is to be given to the applicant's expungements

The applicant is ineligible for the benefit being sought due to her felony convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). There is no waiver available to an alien convicted of a felony committed in the United States. Further, there is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(II) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. 8 C.F.R. § 245a.18(c)(2)(ii). 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.