

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[Redacted]

FILE: [Redacted]
MSC 02 236 62328

Office: LOS ANGELES

Date: DEC 04 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

[Handwritten mark]

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The district director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because she had been convicted of four misdemeanors in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act. The director subsequently rejected the applicant's appeal as untimely. The director's decision rejecting the appeal is withdrawn.

The applicant is represented by counsel on appeal. Counsel argues that three convictions have been vacated, and therefore, her one remaining conviction does not disqualify her from adjustment to permanent resident status under the provisions of the LIFE Act.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt 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 alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, 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 record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses in the Municipal Court of Los Angeles, California:

- A 1989 conviction for one count of violating section 20002(a) of the California Vehicle Code, *Hit and Run/Property Damage*, and one count of violating section 148.9 of the California Penal Code, *False Identification to Peace Officer*. The applicant was placed on one year probation, and was subject to a fine. Docket [REDACTED]
- A 1995 conviction for a violation of section 23152(A) of the California Vehicle Code, *Unlawfully Drive a Vehicle while under the Influence of Intoxicating Liquor*. A second charge of violating section 23152(B) of the California Vehicle Code, *Drive a Vehicle with .08% or More Blood Alcohol* was dismissed. The applicant was placed on 3 years probation, and ordered to serve five days in the county jail. Docket [REDACTED]

- A 1996 conviction for one count of violating section of 14601.5(A) of the California Vehicle Code, *Driving with a Suspended/Revoked License*. A second charge of violating section 21806(A) of the California Vehicle Code, *Failure to Yield to Emergency Vehicle* was dismissed. The applicant was placed on 2 years probation, and was ordered to pay a fine of \$300. Docket

The applicant's motion to dismiss the 1989 convictions and the 1995 conviction pursuant to section 1203.4 of the California Penal Code was granted on September 6, 2001. The issue in this proceeding is whether the applicant's four misdemeanor convictions, three of which were expunged pursuant to section 1203.4 of the California Penal Code, remain valid convictions for immigration consequences. The AAO has reviewed the applicant's brief on appeal and the authorities cited therein, and concludes that the convictions continue to effect immigration consequences, and thus render the applicant ineligible for lawful permanent resident status.

The Ninth Circuit Court of Appeals, the jurisdiction in which this case arises, has deferred to the Board of Immigration Appeals' (BIA) determination regarding the effect of post-conviction expungements pursuant to a state rehabilitative statute.¹ Section 1203.4 of the California Penal Code is a state rehabilitative statute. The provisions of section 1203.4 allow a criminal defendant to withdraw a plea of guilty or nolo contendere and enter a plea of not guilty subsequent to a successful completion of some form of rehabilitation or probation. It does not function to expunge a criminal conviction because of a procedural or constitutional defect in the underlying proceedings. In this case, there is no evidence in the record to suggest that the applicant's convictions were expunged because of an underlying procedural defect in the merits of the case, and the vacated judgments remain valid for immigration purposes.

The applicant has four misdemeanor convictions: two in 1989 for hit and run with property damage, and offering false identification to a police officer, one in 1995 for driving while intoxicated, and one in 1996 for driving with a suspended or revoked license. Any three misdemeanor convictions are an automatic disqualification for adjustment to permanent resident status under the provisions of the LIFE Act.

Because of her four misdemeanor convictions, the applicant is ineligible for adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1). 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.

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

¹ See *Murillo-Espinoza v. INS*, 261 F.3d 771, 774 (9th Cir. 2001) (expunged theft conviction still qualified as an aggravated felony); *Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9th Cir. 2002) (expunged misdemeanor California conviction for carrying a concealed weapon did not eliminate the immigration consequences of the conviction); see also *de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1024 (9th Cir. 2007); *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1067 (9th Cir. 2003) (expunged conviction for lewdness with a child qualified as an aggravated felony).

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.