

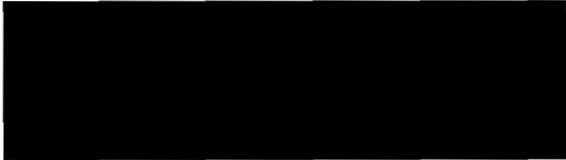


U.S. Citizenship  
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FILE:



MSC 02 064 61461

Office: LOS ANGELES

Date: DEC 16 2008

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In his decision the director denied the application because it was determined that the applicant had been convicted of a felony and was found inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). The director also concluded that the applicant had not established a continuous unlawful residence since prior to January 1, 1982.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for LIFE Act legalization resident status. 8 C.F.R. § 245a.11(d)(1).

"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. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"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. § 245a.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. 8 C.F.R. § 245a.1(o).

An alien is inadmissible if he 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.

Legacy INS received the results of the alien's FBI fingerprint check, which reveal the following criminal history record:

1. On July 24, 1996, the applicant was convicted of VC § 14601(A) Driving With a Suspended License, in the Municipal Court of Whittier District, Los Angeles County. Case No. [REDACTED]
2. On July 5, 1996, the applicant was convicted of VC § 23152(A) Under the Influence of Alcohol or Drugs in Vehicle, in the Municipal Court of Santa Anita District, Los Angeles County. Case No. [REDACTED]
3. On July 12, 1993, the applicant was convicted of VC § 23152(B) Driving With a Blood Alcohol Content of More than .08%, in the Municipal Court of Pasadena District, Los Angeles County. Case No. [REDACTED]
4. On July 12, 1993, the applicant was convicted of VC § 14601(A) Driving With a Suspended License, in the Municipal Court of Pasadena District, Los Angeles County. Case No. [REDACTED]

5. On May 12, 1998, the applicant pled no contest and was convicted of VC § 23152(B), Driving With a Blood Alcohol Content of more than .08%, in the Municipal Court of Pasadena District, Los Angeles County. Case No. [REDACTED]
6. On September 9, 1987, the applicant was convicted of Possession of Marijuana for Sale, H&S § 11360, a felony, in the Superior Court of Los Angeles County, California. Case No. [REDACTED]

On October 12, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) detailing the reasons for the intended denial and allowing the applicant thirty days to response.

The applicant submitted a written response.

The director determined that the applicant had been convicted of a felony violation for possession of narcotics/controlled substance for sale, was inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and was denied the application.

On appeal, counsel for the attempts to assert that the applicant has not been convicted of any crimes and is eligible for LIFE Act legalization.

Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions which do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

Counsel asserts that the conviction in No. 6, above, "was vacated for procedural or substantive defects and not for the post-conviction events such as rehabilitation." However, counsel's assertion is not supported by any corroborating documentation. The minute order provided by counsel simply states, "the previous conviction is to be set aside and the case is to be dismissed." The court order does not provide any reason for this action. An alien seeking to establish that a conviction has been vacated bears the burden of proving that the conviction was not vacated solely for immigration purposes. *In re Chavez-Martinez*, 24 I&N Dec. 272 (BIA 2007). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without persuasive evidence as to the court's reasons for the vacature of this conviction, the applicant remains convicted of the crime for immigration purposes.

Counsel also attempts to assert that multiple convictions arising from a single scheme are considered one conviction. The notion of multiple convictions being distinct and separate is so basic that it is covered by Black's Law Dictionary, 314 (5th Ed., 1979), which defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Counsel's assertion lacks any legal merit.

The applicant has been convicted of a felony and multiple misdemeanors, and is ineligible for LIFE Act legalization as a matter of law, and inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his convictions. *See also* 8 C.F.R. 245a.(11)(d)(1).

The director concluded that the applicant had not established a continuous unlawful residence and presence since prior to January 1, 1982 through May 4, 1988. This portion of the decision will be withdrawn. While there is some doubt about the credibility of the applicant's assertions and the evidence submitted, Matter of E-M- holds that the burden of proof is by preponderance of evidence, allowing for some doubt about eligibility as long as the record supports that the applicant was probably resident and present during the required period. In this case the record contains government correspondence and other documentation which meet the applicant's burden of proof, despite reservations about the credibility of the applicant's evidence and circumstances during the required period.

The applicant has been convicted of a felony and multiple misdemeanors, and is ineligible for LIFE Act legalization as a matter of law, and inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his convictions. 8 C.F.R. 245a.11(d)(1). An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.