

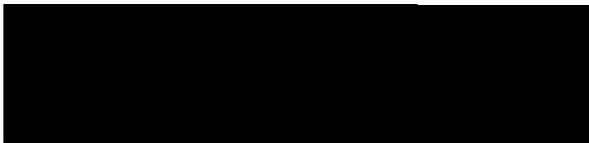
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U.S. Citizenship
and Immigration
Services

L2



FILE: [REDACTED] Office: LOS ANGELES
MSC 02 245 61730

Date: DEC 17 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:



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.

A handwritten signature in blue 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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 he had been convicted of four misdemeanors in the United States. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant is represented by counsel on appeal. Counsel argues that two of the applicant's four misdemeanor convictions have been dismissed pursuant to a *Writ of Coram Nobis*. Therefore, the remaining two convictions do not disqualify the applicant from adjustment to permanent resident status under the provisions of the LIFE Act.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(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).

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 Superior Court of Los Angeles, California:

- On October 8, 1986, the applicant pleaded guilty to one count of violating section 12500(A) of the California Vehicle Code – *Unlicensed Driver* (misdemeanor), and one count of violating section 22350 of the California Vehicle Code – *Driving at Unsafe Speed* (infraction). Additional counts of violating California Vehicle Code section 2800.1 – *Attempt to Evade Peace Officer*, and three counts of violating section 21453(A) – *Failure to Stop at Red Light* were dismissed. The applicant was placed on probation for 12 months. The applicant’s motion to withdraw the guilty plea pursuant to a petition for writ of error *Coram Nobis* was granted on February 9, 2007. (Docket No. [REDACTED])

On May 9, 1990, the applicant pleaded *nolo contendere* to one count of violating section 484(A) of the California Penal Code – *Theft*, and to one count of violating section 148.9 of the California Penal Code, *False ID to Peace Officer*. The applicant was sentenced to two years probation and five days in jail for the theft conviction, and ordered to serve 180 days in jail for the false ID conviction. Both of these offenses are considered misdemeanors under California law. (Docket No. 90 [REDACTED])

- On June 9, 1992, the applicant pleaded *nolo contendere* to one count of violating section 484(A) of the California Penal Code – *Theft*. One count of violating section 459 of the California Penal Code – *Burglary*, was dismissed pursuant to a plea agreement. The applicant was sentenced to three years probation, three days in jail and ordered to perform 14 days of community service. (Docket No. [REDACTED])

Counsel for the applicant contends that the dismissal of the 1986 convictions for unlicensed driving and driving at an unsafe speed are no longer valid for immigration purposes. Counsel also argues that a dismissal pursuant to a writ of error *Coram Nobis* “must be recognized by the district director.” In this case, the AAO need not address whether a conviction dismissed pursuant to a writ of error *Coram Nobis* remains a valid conviction for immigration purposes, or whether a dismissal on these grounds must be given weight in an application for permanent residence, or other applications for immigration benefits because the applicant has disqualifying criminal convictions.¹

¹ The writ of error *coram nobis* is a common law writ that means, “an error remains in our presence.” Only the court that issued the judgment has jurisdiction to grant the writ. To warrant *coram nobis* relief, the petitioner must satisfy four requirements, including a showing that fundamental error occurred in the proceedings and that there are valid reasons why the petitioner did not act to attack the conviction earlier. See *Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir.1987). The Ninth Circuit Court of Appeals, the jurisdiction in which this case arises, has made it clear that the *writ of error coram nobis* is a “highly unusual remedy, available only to correct grave injustices in a narrow range of cases where no more conventional remedy is applicable.” *United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir.2007). “[A] petitioner must show the following to qualify for *coram nobis* relief: (1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character.” *Id.* at 1006 (citation omitted).

The record before the AAO indicates that the applicant remains convicted of three disqualifying misdemeanor convictions: two counts of theft and one count of presenting false identification to a peace officer.

Because of his three 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 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.