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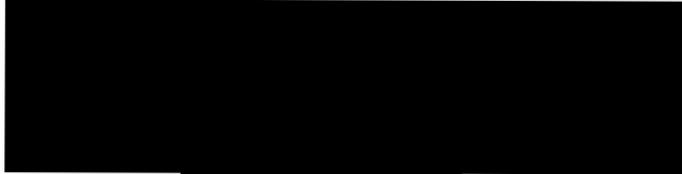
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: [Redacted]
MSC 02 218 63840

Office: Los Angeles

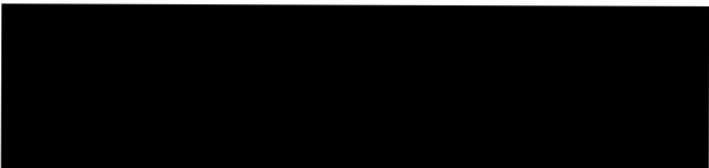
Date: DEC 17 2008

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. 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.

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

The applicant is represented by counsel on appeal. Counsel contends that the applicant remained eligible to adjust to permanent resident status under the provisions of the LIFE Act because two convictions have been vacated and thus are no longer valid "convictions" for immigration purposes. Counsel also maintains that the district office did not have an opportunity to review the evidence concerning the vacated convictions. Counsel requests that the case be remanded to the district office for further consideration because the AAO cannot review the matter *de novo*.

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).

"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 a series of arrests and convictions for the following misdemeanor offenses in the Superior Court of Ventura County, California:

- On June 19, 1987, the applicant was charged with one count of violating section 484(A) of the California Penal Code – *Theft of Personal Property*, and one count of violating section 148.9 – *False ID to Peace Officer*. Simultaneously, the applicant was also charged with illegal entry into the United States, in violation of 8 U.S.C. § 1325. The record is unclear as to the ultimate sentence on the theft and false identification charges; however, the record suggests that the applicant was sentenced to a period of probation. Both of these offenses are considered misdemeanors under California law.
- On December 24, 1990, the applicant was again charged with two counts of violating section 484(A) of the California Penal Code – *Theft of Personal Property*. Again, the record suggests that the applicant was sentenced to a term of probation.
- On February 5, 1991, the applicant was convicted of one count of violating section 484(A) of the California Penal Code – *Theft of Personal Property*. The applicant was sentenced to three years probation, and 45 days in jail.
- On March 4, 1997, the applicant was convicted of one count of violating section 484(A) of the California Penal Code – *Theft of Personal Property*, and one count of violating section 666 of the California Penal Code – *Petty Theft with Priors*. The applicant was sentenced to three years probation, and 30 days in jail. Both of these offenses are considered misdemeanors under California law. (Docket No. [REDACTED])

Counsel's contention that the case must be remanded to the district office because the AAO does not have *de novo* review authority is without merit. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Additionally, counsel's contention that the expungement of the applicant's 1991 conviction for violating section 484(A) of the California Penal Code – *Theft of Personal Property*, and the 1997 conviction for violating section 666 of the California Penal Code – *Petty Theft with Priors* eliminates the immigration consequences of these convictions is equally without merit. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits as a result of underlying procedural or constitutional defects are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan, id.* The orders of expungement indicate that the 1991 and 1997 convictions were vacated because the applicant successfully complied with the terms of probation, and were not vacated because of an underlying substantive or procedural error in the criminal proceedings. Therefore, the applicant remains "convicted" of the misdemeanor offenses cited above for immigration purposes.

Because of her multiple 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.