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U.S. Citizenship
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FILE:



Office: LOS ANGELES

Date: DEC 18 2008

MSC 02 240 65498

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. 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 black ink, appearing to be "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 three misdemeanors in the United States. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant represents himself on appeal. He states on the Notice of Appeal (Form I-290B) that he has not yet hired an attorney to represent him and he requests a thirty day extension of time to do so. The AAO notes that the I-290B was timely filed on September 24, 2007. To date, the AAO has received no further statements or evidence from the applicant. Federal regulatory provisions governing an appeal from a decision by the director state, in pertinent part, that an appeal which is filed that fails to state the reason for appeal or is patently frivolous will be summarily dismissed. *See 8 C.F.R. § 103.3(a)(3)(iv). (2007).* The applicant has not identified the reasons for the appeal, and thus, the appeal is subject to summary dismissal.

Furthermore, 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 record indicates that the applicant has three misdemeanor convictions in the state of California. On December 19, 2000, the applicant pleaded *nolo contendere* to one count of violating section 35550(A) of the California Vehicle Code – *Exceed 20,000 pounds on single axle*. The applicant was sentenced to a term of probation for one year. This conviction was later reduced to an infraction by order of the Los Angeles Superior Court on August 8, 2006 (Docket # [REDACTED]).

The applicant also pleaded *nolo contendere* on April 13, 1993 to one count of violating section 23152(B) of the California Vehicle Code - *.08% More Weight Alcohol Drive Vehicle*. The applicant was sentenced to a term of probation for three years and served two days in the county jail.

On June 11, 1993, the applicant pleaded *nolo contendere* to a misdemeanor violation of section 273.5(A) of the California Penal Code – *Inflict Corporal Injury on Spouse*. The applicant was sentenced to 30 days in the county jail and a term of probation for two years.

The record also indicates that the applicant was also charged with violating section 273.5(A) of the California Penal Code – *Inflict Corporal Injury on Spouse* on December 9, 1991. However, this charge was adjudicated through a pre-trial diversion program where the applicant was placed on probation for two years. At the conclusion of the probationary period, the applicant pleaded not guilty to the charge and the court, having determined that the applicant had successfully completed probation, dismissed the charge on June 21, 1993.

The record before the AAO indicates that the applicant has three misdemeanor convictions, one of which was later reduced to an infraction. Generally, post-conviction relief granted simply to avoid the immigration consequences of a conviction are not recognized in immigration proceedings. 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 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). However, the trial court’s decision to reduce *nunc pro tunc* the applicant’s December 19, 2000 vehicle code conviction from a misdemeanor to an infraction is entitled to full faith and credit in immigration proceedings. *See In Re Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005). Therefore, the applicant’s December 19, 2000, conviction for violating section 35550(A) of the California Vehicle Code is not considered a valid “conviction” in determining eligibility for adjustment of status to one of lawful permanent residence.

Nonetheless, the applicant’s conviction for a violation of section 273.5(A) of the California Penal Code – *Inflict Corporal Injury on Spouse* is considered a conviction for a crime involving moral turpitude (CIMT). *See Grageda v. U.S. Immigration and Naturalization Service*, 12 F.3d 919 (9th Cir. 1993) (conviction for spousal abuse under California law was offense of moral turpitude).

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.