

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

[REDACTED]

Office: Houston

Date:

JUL 01 2008

MSC 02 184 60290

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, Texas, 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 he had been convicted of three misdemeanors in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act.

On appeal, the applicant admits the convictions but states that the convictions should not count as he has resided in the United States for 25 years, is now a responsible person, and he has reformed. The applicant does not submit additional evidence on appeal.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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 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)..

In applying the definition of a conviction under section 101(a)(48)(A) of the Act, the Board of Immigration Appeals (BIA) found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. Thus, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a “conviction” within the meaning of section 101(a)(48)(A) of the Act; if, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains “convicted” for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). In this case, the applicant does not claim any defect in the underlying criminal proceedings.

The record contains court documents that reflect the applicant has been convicted of the following offenses:

1. On January 8, 1993, the applicant was convicted in the United States District Court, Western District of Texas, for the offense of Illegal Entry, a misdemeanor. The court sentenced the applicant to 120 days jail;
2. On September 9, 1995, the Livingston Municipal Court, Livingston, Texas, convicted the applicant, after a trial, of a violation of Assault Misdemeanor C – Family Violence. The court imposed a jail sentence, and fined the applicant \$200.00;
3. On August 22, 1997, the Livingston Municipal Court, Livingston, Texas, convicted the applicant on a guilty plea for the offense of Public Intoxication – Misdemeanor C. The court fined the applicant \$100, and he was released from jail on August 23, 1997; and,
4. On June 22, 2001, the County Court of Polk County, Texas, convicted the applicant on a guilty plea for the offense of Driving While Intoxicated, a Class B Misdemeanor. The court sentenced the applicant to 90 days jail, \$600 fine and \$271.25 costs, and placed the applicant on one year probation.

The record is clear that the applicant has been convicted of the misdemeanor offenses cited above for immigration purposes.

Because he has three or more misdemeanor convictions, the applicant is ineligible to 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 applicant convicted of a felony or three or more misdemeanors committed in the United States.

An applicant 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 Act, 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.