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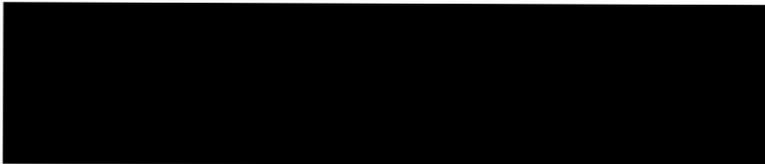
Office: LOS ANGELES

Date: **JUL 03 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 black ink, appearing to read "R. Wiemann".

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

The district director determined that the applicant had been convicted of three or more misdemeanors and therefore, pursuant to 8 C.F.R. § 245a.18(a), was ineligible for adjustment to lawful permanent residence status under the LIFE Act.

Counsel for the applicant timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Office, in which he asserted that denial of the application was not warranted as the crimes for which the applicant was convicted were “mere traffic in addition to the misdemeanor.” Counsel indicated on the Form I-290B a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than 28 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

The applicant’s criminal record history reveals that on July 1, 1986, the applicant was convicted in the Municipal Court of Southeast/San Antonio Judicial District, County of Los Angeles, of the misdemeanor offenses of grand theft, in violation of California Penal Code section 487(1), and burglary in violation of California Penal Code section 459. He was sentenced to 45 days in the county jail, ordered to make restitution, and placed on three years probation.

The applicant’s Department of Motor Vehicles record also reveals that on September 10, 1998, he was convicted of driving in the wrong lane in violation of California Vehicle Code section 22348(c), on July 20, 2000, he was convicted of failure to stop in violation of California Vehicle Code section 21453(a), and on October 22, 2001, he was convicted of a violation of the California seat belt law, section 27315(d) of the California Vehicle Code. The director determined that these violations were misdemeanors, rendering the applicant ineligible for adjustment of status under the LIFE Act. However, none of the traffic offenses committed by the applicant rise to the level of a misdemeanor, and therefore cannot be a basis for ineligibility under 8 C.F.R. § 245a.18(a). Section 40000.1 of the California Vehicle Code provides that a violation of the vehicle code is an infraction unless otherwise provided in the article. None of the offenses committed by the applicant appear in the list of exceptions provided in section 40000.

The regulation at 8 C.F.R. § 245a.18 provides:

(a) *Ineligible aliens.* (1) 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 LPR status under this Subpart B.

As the applicant has only been convicted of two misdemeanors, he is not ineligible for adjustment of status pursuant to the provisions of 8 C.F.R. § 245a.18.

However, the record establishes that the applicant has been convicted of grand theft. Grand theft is a crime involving moral turpitude. *Blumen v. Haff*, 78 F.2d 833 (9<sup>th</sup> Cir. 1935). An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Act. Section 1140(c)(2)(D)(i) of the LIFE Act.

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such crime. Section 212(a)(2)(A)(i)(I)

of the Immigration and Nationality Act (the Act). Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the Act (crimes involving moral turpitude) may *not* be waived.

However, section 212(a)(2)(A)(ii) of the Act provides the following exceptions:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In this case, the applicant has been convicted of two misdemeanors. Therefore, he cannot meet the exceptions specified in section 212(a)(2)(A)(ii) of the Act. Accordingly, the applicant is inadmissible into the United States.

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).

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