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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: **JUL 11 2008**

[REDACTED] - consolidated herein]

MSC 02 142 63074

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, Los Angeles, California, 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, counsel for the applicant submits a brief.

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 record contains court documents reflecting that the applicant has been convicted of the following misdemeanor offenses in Riverside County, California:

- (1) on June 4, 2001, a violation of section 647(F) of the California Penal Code (Public Intoxication);
- (2) on November 25, 2002, a violation of section 23152(A) of the California Vehicle Code (Driving Under the Influence); and,
- (3) on November 25, 2002, a violation of section 23152(B) of the California Vehicle Code (Driving with a blood alcohol content of greater than .08%).

On appeal, counsel asserts that the applicant's convictions noted in Nos. 2 and 3, above, stemmed from one arrest, therefore, the applicant has only two misdemeanor convictions.

Counsel's assertions are not persuasive. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to the issue of his *removability* under section 237 of the Act, this determination has no bearing on his *ineligibility* for adjustment of status to permanent residence under the LIFE Act.

Because of his three misdemeanor convictions, the applicant is ineligible for adjustment of status 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. Here, the applicant has failed to meet this burden.

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