



U.S. Citizenship
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[Redacted]

FILE: [Redacted]
MSC 03 210 62727

Office: LOS ANGELES

Date: **JUN 30 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:

[Redacted]

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.

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

The director denied the application on the ground that the applicant had been convicted of three misdemeanors committed in the United States.

On appeal counsel asserts that the applicant's three convictions were all part of a single scheme of criminal misconduct and should therefore be treated as only one misdemeanor conviction for the purposes of LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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. *See* section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

As defined in 8 C.F.R. § 245a.1(o):

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).¹ 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.

The record includes a certified court record from the Superior Court of Los Angeles County, State of California, confirming that the applicant was arrested on August 5, 1995 by the Claremont Police Department, and charged with four misdemeanor violations:

1. Driving a motor vehicle under the influence of alcohol or drugs, in violation of California Vehicle Code (VC) section 23152(a).
2. Driving a motor vehicle with a blood alcohol weight of 0.08 % or more, in violation of VC section 23152(b).

¹ The regulation at 8 C.F.R. § 245a.1(p) defines "felony" generally as a crime punishable by imprisonment for more than one year, but makes an exception if such an offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less.

3. Driving with a suspended license, in violation of VC section 14601.1(a).
4. Giving false information to a peace officer, in violation of VC section 31.

On March 25, 1996 the applicant pleaded guilty in the Pomona Courthouse, Division 007, to three of the counts – 1, 3, and 4 – while count 2 was dismissed. The court sentenced the applicant to 365 days in the Los Angeles County Jail for the three convictions.

Because of his three misdemeanor convictions, the director ruled that the applicant is ineligible for adjustment to permanent resident status under the LIFE Act. The director determined that the three criminal offenses for which the applicant was convicted were not a single scheme of criminal misconduct because each offense was separate and distinct from the other, the applicant made separate and distinct choices to commit each of the crimes, and none of the crimes was a lesser-included offense of the others. There is no waiver available to an alien convicted of a felony, or three or more misdemeanors, committed in the United States.

On appeal, counsel asserts that the director misinterpreted applicable law. Counsel referred to *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992), cited by the director in his decision, in which the Board of Immigration Appeals discussed the concept of a “single scheme of criminal misconduct” as follows:

[T]here would exist a single scheme of criminal misconduct where one crime constituted a lesser offense of another, or where the two crimes flow from and are the natural consequence of a single act of criminal misconduct

20 I&N Dec. at 509. The Board went on to discuss a similar analysis in a federal appeals court:

The court in *Pacheco v. INS*, 546 F.2d 448 (1st Cir. 1976), *cert. denied*, 430 U.S. 985 (1977), appears to have most closely followed the same analysis [T]he court concluded that to be a “single scheme,” the scheme must take place at one time, meaning there must be no substantial interruption that would allow the participant to disassociate himself from his enterprise and reflect on what he has done.

Id. at 509-10. These two cases, counsel asserts, show that the applicant’s conviction of three misdemeanor counts in 1996 should be treated as a single scheme of criminal misconduct. In counsel’s view, the three crimes of which the applicant was convicted – driving on a suspended license, driving under the influence, and giving false information to a police officer – were part of a single criminal episode. In addition, the last of the crimes flowed from and was a natural consequence of the first two, and was committed without time to reflect. According to counsel, therefore, the applicant’s guilty plea on three counts should be treated as a single misdemeanor conviction, which would not make him ineligible for legalization under the LIFE Act.

The AAO does not agree with counsel's argument. None of the three crimes to which the applicant pleaded guilty flows from, or is a natural consequence of, a single act of criminal misconduct. Driving with a suspended license and driving under the influence are completely separate crimes which do not have any natural relation to one another. When the applicant decided to drive with a suspended license, he could have limited his criminal misconduct by doing so at a time he was not also drinking. When the applicant was stopped by the police, having committed the two crimes above, he could still have limited his criminal misconduct by not giving false information to the police. None of the foregoing crimes flowed naturally or inevitably from the other, and the applicant had ample opportunity to reflect on his course of conduct at various stages and disassociate himself from his enterprise before he committed all three misdemeanors. Based on the foregoing analysis, the AAO concludes that the applicant's three misdemeanor convictions do not constitute a single scheme of criminal misconduct.

Accordingly, the director's decision will be affirmed on the ground that the applicant's conviction of three misdemeanors committed in the United States makes him ineligible, under 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1), for adjustment to permanent resident status.

An alien applying for adjustment of status under the provisions of section 1104 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 Immigration and Nationality Act, and is otherwise eligible for adjustment of status. *See* 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.