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U.S. Citizenship  
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Services

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22

[REDACTED]

FILE:

MSC 02 002 64757

Office: LOS ANGELES

Date:

MAR 17 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, former counsel requested 30 days in which to submit a brief and/or evidence. Subsequently, counsel requested an additional 30 days in which to submit a brief. However, more than two years later, no brief or evidence has been presented.

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. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 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 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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

At the time the applicant filed his LIFE application, the applicant presented:

- A local criminal history transcript from the Santa Ana Police Department in California, which indicated that arrest records prior to 1989 have been destroyed. The transcript also listed the applicant’s arrest on September 14, 1990, for driving under the influence of alcohol, a violation of section 23512(a) VC, and driving without a license, a violation of section 12500(a) VC.
- A Certificate of Completion from the National Traffic Safety Institute, which indicated the applicant has successfully completed the drinking driving program on March 23, 1991, in Case no. [REDACTED]
- An Orange County Drinking Driving Program Discharge report dated January 29, 1993, in Case no. [REDACTED] which indicated the applicant had enrolled on June 24, 1991, and had successfully completed this 18-month drinking driving program.  
A referral form, time sheets and several receipts from School Ten, Inc. relating to the Orange County Drinking Driving Program.
- A Notice of Completion from the California Department of Motor Vehicles (DMV) regarding the 18-month drinking driving program completed on January 29, 1993.
- A time sheet from October 1991 to December 1991 from Hispanic Alcoholism Services Center in Garden Grove, California.
- A time sheet from June 1991 to August 1991 from Volunteer Center of Orange County West.

Copies of court documentation from the Orange County Superior Court reflecting the applicant's arrests on September 14, 1990, and April 5, 1991, and that the record for his July 17, 1994 arrest in Case no. [REDACTED] had been destroyed.

A Form H-6 dated September 10, 2001, from the California DMV, which reflects the applicant's arrests on: 1) September 14, 1990, for driving under the influence of alcohol, a violation of section 23512(a) VC, driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, and driving without a license, a violation of section 12500(a) VC. The form indicated that on October 16, 1990, the applicant was convicted of all three offenses. The applicant was ordered to pay a fine, placed on probation for three years and his license was restricted to drive to and from his place of employment and the treatment program; 2) April 5, 1991, and his subsequent conviction on June 3, 1991, for driving under the influence of alcohol, a violation of section 23512(a) VC in Case no. [REDACTED]. The applicant was sentenced to serve time in jail, placed on probation for three years, ordered to pay a fine and attend an alcohol treatment program; and 3) July 17, 1994, and subsequent conviction on September 1, 1994, for driving while license is suspended or revoke, a violation of section 14601.2 VC in Case no. [REDACTED]. The applicant was ordered to serve time in jail and placed on probation for three years.

The FBI record, via a fingerprint analysis, reflects the applicant's criminal history in the state of California as follows:

On October 5, 1981, the applicant was arrested by the Sheriff's Office in Santa Ana for receiving known stolen property, a violation of section 496 PC.

On April 18, 1989, the applicant was arrested or received by the Sheriff's Office in Santa Ana for "commitment C O C disobey court order/process." The applicant was sentenced to serve five days in jail.

On January 7, 2003, the director issued a Form I-72, which requested the applicant to submit the final original court dispositions for his arrests in 1981, 1990, 1992, and 1994. The applicant, in response, submitted the original court documents from the Orange County Superior Court reflecting the applicant's arrests on September 14, 1990, April 5, 1991, and July 17, 1994.

In response to the Notice of Intent to Deny issued on November 28, 2005, the applicant submitted additional documentation from the Orange County Superior Court, which indicated that misdemeanor cases prior to 1994 had been destroyed pursuant to Government Code section 68152, and were no longer maintained pursuant to Government Code section 71008 A.C.

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. The applicant has the burden to establish with *affirmative evidence* that the offenses were either dismissed or were in error.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for the benefit being sought as he has failed to provide the court disposition for his 1981 arrest necessary for the adjudication of the application. The applicant is also ineligible for the benefit being sought because he has been convicted of at least three misdemeanors. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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