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

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FILE: [REDACTED]  
MSC 01 353 61861

Office: LOS ANGELES

Date: MAY 23 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.

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 four misdemeanors and therefore, pursuant to 8 C.F.R. § 245a.11(d)(1), was ineligible for adjustment of status under the LIFE Act. Accordingly, the director denied the application for adjustment of status as a permanent resident.

The applicant's criminal record history reveals the following:

1. On April 27, 1990, the applicant was convicted in the Municipal Court of El Monte, County of Los Angeles, for driving under the influence with alcohol or drugs in the vehicle, in violation of California Vehicle Code section 23152(a). He was sentenced to 48 hours in the county jail, ordered to pay a fine of \$300, ordered to perform 120 hours of community service, and placed on summary probation for three years. Case no. 90M03255. The court noted that the applicant had an alleged prior conviction on September 29, 1988, for driving a vehicle with a blood alcohol content of .08% or more, in violation of California Vehicle Code 23152(b) in the Alhambra Municipal Court under case number [REDACTED]
2. On December 29, 1998, the applicant was convicted in the Municipal Court of West Covina, County of Los Angeles, for driving a vehicle with a blood alcohol content of .08% or more, in violation of California Vehicle Code 23152(b). He was ordered to pay a fine of \$390, a state penalty fund assessment of \$663, plus other costs, and placed on three years summary probation. Case no. [REDACTED]
3. On February 1, 2001, the applicant was convicted in the Superior Court of California, County of Los Angeles, of driving under the influence with alcohol or drugs in the vehicle, in violation of California Vehicle Code section 23152(a). He was sentenced to four days in the county jail, ordered to pay a fine of \$390, a state penalty fund assessment of \$663, plus other costs, and placed on three years summary probation. Case no. [REDACTED]

The applicant did not submit evidence of his 1988 conviction in the Alhambra Municipal Court. On appeal, the applicant submits a March 28, 2006 letter from the Superior Court of California, County of Los Angeles, Alhambra Courthouse, which states the records of this conviction had been destroyed. The applicant did not request a copy of any archived records of the conviction. Additionally, the destruction of the records by the state does not eliminate the conviction.

The record, therefore, reflects that the applicant was convicted of at least four misdemeanors. The regulation at 8 C.F.R. § 245a.11 provides that an eligible alien may adjust status to the of a lawful permanent residence provided he or she has not been convicted of any felony or of three or more misdemeanors committed in the United States.

On appeal, counsel submits copies of minute orders from the Municipal Court of Los Angeles and the Superior Court of California indicating that the applicant's convictions on December 29, 1998, and February 1, 2001, had been set aside pursuant to the applicant's motion under California Penal Code section 1203.4, which provides that the conviction may be set aside upon the successful completion of probation. However, for immigration purposes, these are still convictions. Congress has not provided any

exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Therefore, as the applicant has been convicted of four misdemeanors, he is ineligible for adjustment of status to that of permanent resident under section 1104 of the LIFE Act.

Additionally, the applicant's evidence does not demonstrate that he has continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988, as required by Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). For this additional reason, the application must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district office does not identify all of the grounds for denial in the initial decision. 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).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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