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FILE:



Office: LOS ANGELES

Date: **MAY 27 2008**

MSC 01 300 60453

IN RE: Applicant:



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:

Self-represented

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 summarily dismissed.

The director denied the application on the ground that the applicant had been convicted of four misdemeanors in the State of California, which made him ineligible for LIFE legalization under section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1).

On appeal the applicant claims that he has not been convicted of four misdemeanors and is not ineligible for LIFE legalization.

The applicant, a native of Mexico, filed his application for permanent resident status under the LIFE Act (Form I-485) on July 27, 2001.

In a Notice of Intent to Deny (NOID) issued on September 1, 2006, the director referred to certified court documentation in the record indicating that the applicant had been convicted of four misdemeanors in the State of California during the 1990s. Since the LIFE Act specifies that an alien is ineligible for legal permanent resident status if he or she has been convicted of a felony or three misdemeanors committed in the United States, the director advised the applicant of her intention to deny his application and granted him 30 days to submit additional evidence to rebut the evidence of record.

In response to the NOID the applicant submitted a copy of a petition he filed in the Superior Court of California, dated September 27, 2007, listing the various charges against the applicant between December 31, 1990 and August 11, 1999, stating that probation had been granted by the court and fulfilled by the applicant for the entire period, and requesting the court to set aside the conviction(s) and dismiss the action(s) pursuant to section 1203.4a of the Penal Code. No order had been issued by the court, either granting or denying the petition, at the time of the applicant's response to the NOID.<sup>1</sup>

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<sup>1</sup> Section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" as follows:

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Under the statutory definition of "conviction" at section 101(a)(48)(A) of the INA, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent rehabilitative action that

On October 4, 2006, the director denied the application for LIFE legalization on the ground that the evidence submitted by the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal the applicant asserts that he was not convicted of a felony or three or more misdemeanors, and therefore was not ineligible for legalization under the LIFE Act. The applicant indicated that additional documentation and a brief would be submitted within 30 days. No such materials were submitted in the next 30 days, however, or at any time thereafter.

As provided in 8 C.F.R. § 103.3(a)(3)(iv), any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision confirms that the director accurately set forth a legitimate basis for denial of the application. On his appeal form the applicant simply claims that he “was not convicted of three or more misdemeanors nor one felony,” without addressing the four specific misdemeanor convictions cited by the director in the NOID and without submitting any documentary evidence in support of his claim. Since the applicant’s unsupported claim is directly contradicted by the evidence of record, the AAO finds the applicant’s appeal to be frivolous within the meaning of 8 C.F.R. § 103.3(a)(3)(iv).

Accordingly, the appeal will be summarily dismissed.

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

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overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. See also *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000) (conviction vacated under a state criminal procedural statute, rather than a rehabilitative provision, remains vacated for immigration purposes). In *Matter of Pickering*, a more recent precedent decision, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains “convicted” for immigration purposes. See *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

The applicant’s petition to set aside his convictions and dismiss the charges against him was not based on the merits of those cases. For immigration purposes, therefore, the applicant would remain convicted of the subject misdemeanors even if his petition were granted by the court.