

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

L2

FILE: [REDACTED]
MSC 02 162 64287

Office: Los Angeles

Date: **MAY 30 2008**

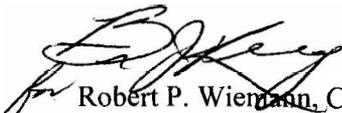
IN RE: Applicant: [REDACTED]

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:

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 she had been convicted of six misdemeanors in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act.

On appeal, counsel asserts that the director erred in denying the application because three of the misdemeanor convictions have been expunged. On appeal, counsel submits court records indicating that three of the applicant's misdemeanor convictions have been expunged because the applicant successfully completed probation. Counsel, therefore contends that the applicant has only one misdemeanor conviction for immigration purposes.

First, it is noted that, as discussed below, the court records reveal that the applicant has six misdemeanor convictions, not four convictions, as counsel implies.

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 under the provisions of the LIFE Act. Section 1104(c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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).

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.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A)..

In applying the definition of a conviction under section 101(a)(48)(A) of the Act, the Board of Immigration Appeals (BIA) found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. Thus, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a “conviction” within the meaning of section 101(a)(48)(A) of the Act; if, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent

remains "convicted" for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). In this case, the applicant does not claim any defect in the underlying criminal proceedings.

The record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses in the Municipal Court of California, County of Los Angeles:

1. Court Case # [REDACTED] filed on December 4, 1991, for a violation of section 647(B) Disorderly Conduct: Prostitution, of the California Penal Code, which resulted in the applicant being convicted on December 4, 1991;
2. Court Case # [REDACTED] filed on March 6, 1992, for a violation of section 647(A) Disorderly Conduct: Lewd Act, of the California Penal Code, which resulted in the applicant being convicted on March 6, 1992;
3. Court Case # [REDACTED] filed on April 27, 1992, for a violation of section 647(B) Disorderly Conduct: Prostitution, of the California Penal Code, which resulted in the applicant being convicted on April 27, 1992;
4. Court Case # [REDACTED] filed on July 22, 1992, for a violation of section 647(B) Disorderly Conduct: Prostitution, of the California Penal Code, which resulted in the applicant being convicted on July 22, 1992;
5. Court Case # [REDACTED] filed on December 18, 1992, for a violation of section 647(B) Disorderly Conduct: Prostitution, of the California Penal Code, which resulted in the applicant being convicted on December 18, 1992; and,
6. Court Case # [REDACTED] filed on April 8, 1993, for a violation of section 647(B) Disorderly Conduct: Prostitution, of the California Penal Code, which resulted in the applicant being convicted on April 8, 1993.

Even if the counsel has obtained orders vacating the applicant's three misdemeanor convictions, Congress has not provided any exception for applicants who have been accorded rehabilitative treatment under state law. Any rehabilitative action that overturns a state conviction is ineffective to expunge a conviction for immigration purposes. *Matter of Roldan*, 22 I&N Dec. at 523, 528. Therefore, the applicant remains "convicted" of the six misdemeanor offenses cited above for immigration purposes.

Because of her six misdemeanor convictions, the applicant is ineligible to adjust 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 applicant convicted of a felony or three or more misdemeanors committed in the United States.

Furthermore, an alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he or she admits having committed such crime, or if he or she admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the Act, (crimes involving moral turpitude) may *not* be waived. Prostitution is an inadmissible offense. Section 212(a)(2)(D) of the Act.

As noted above, the applicant has five convictions for engaging in prostitution in violation of section 647(B) Disorderly Conduct: Prostitution, of the California Penal Code.

The applicant has been convicted of crimes involving moral turpitude. As noted above, the applicant has been convicted of five prostitution offenses. Therefore, the applicant is inadmissible under the provisions of Section 212(a)(2)(D) of the Act.

An applicant 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 Act, and is otherwise eligible for adjustment of status. 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.