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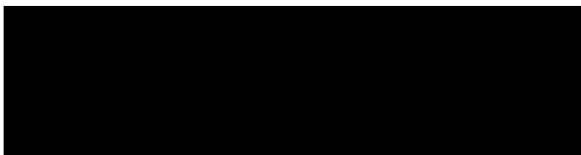
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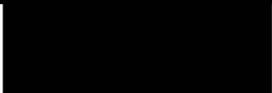
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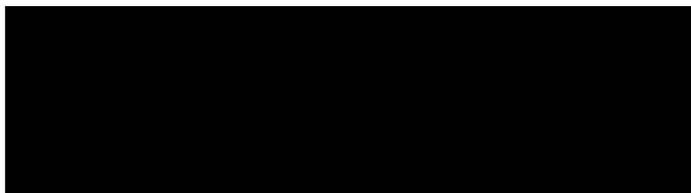
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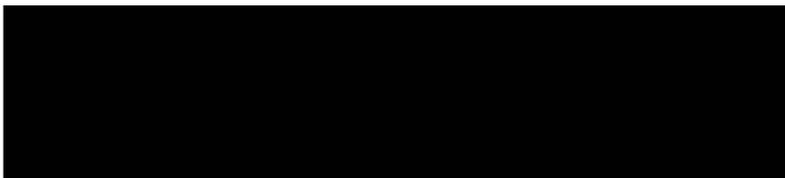
IN RE:

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:



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 "Robert P. 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 Director, Detroit, Michigan, and is now before the Administrative Appeals Office 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 he had been convicted of a felony in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act.

On appeal, counsel states that the applicant has been convicted of two "Driving While Intoxicated with Priors (DWI2), a "Class D" felony under the laws of the State of Indiana, and therefore the convictions should not be considered felonies under the LIFE Act.

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.

The regulation at 8 C.F.R. § 245a.18(a)(1) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status.

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except 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 such alien actually served. 8 C.F.R. § 245a.1(p).

According to the final court records, on May 15, 2006, the Superior Court No. 4, State of Indiana, County of Tippecanoe, (Case Number: [REDACTED]) convicted the applicant (under the AKA name: [REDACTED]) on a guilty plea, to a violation of "OWI w/Prior), a Class D felony. The applicant was sentenced to 3 years jail, plus fines and costs, and other restrictions. The court placed the applicant on unsupervised probation for a period of 2 years and 245 days. In addition, on July 26, 2006, in the Boone Superior Court II, State of Indiana, County of Boone, (Case Number: [REDACTED]), the applicant, under the name [REDACTED] was convicted of Operating While Intoxicated, a Class D felony. The applicant was sentenced to the Indiana Department of Correction for a period of 3 years suspended except 57 actual days time served, with credit for time served, with sentence consecutive to cause [REDACTED]. Fines and court costs were waived, the applicant was ordered to sign a Waiver of Extradition, and he was placed on probation for a period of 2 years and 245 days, with other restrictions.

On appeal, counsel asserts that there is no comparable federal offense which would constitute a felony, and therefore, the convictions should not be considered felonies for purposes under the LIFE Act. Counsel does not provide any statutory basis or legal precedent in support of his assertion.

Contrary to counsel's assertion, the applicant's convictions for the crimes committed in the United States falls squarely within the statutory definition of a felony.

Because of his felony convictions, the applicant is ineligible for adjustment 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.

It also noted that the applicant's Federal Bureau of Investigation (FBI) results report reflects that:

1. On November 11, 1989, the applicant was arrested by the Sheriff's Office, Santa Ana, California, [REDACTED] Case No. [REDACTED] and charged with "H & R RESULT IN PROP DAMAGE;"
2. On January 14, 1996, the applicant (under the AKA: [REDACTED]) was arrested by the Police Department, Elk Grove, Illinois, (IL 0163000, Case No. [REDACTED]) and charged with "DRIVING UNDER INFLUENCE/ALCOHOL," and,
3. On November 17, 1996, the applicant (under the AKA: [REDACTED]) was arrested by the Police Department, Lafayette, Indiana, (IN 0790100, Case No. [REDACTED]) and charged with Count 1: "OPERATING WHILE INTOXICATED;" and Count 2; "OBSTRUCTION OF JUSTICE."

The final court dispositions are not in the record of proceeding. CIS must address these arrests in any future proceedings.

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.