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U.S. Citizenship  
and Immigration  
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

**FEB 25 2009**

MSC-03-024-60511

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. 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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit final original court certified dispositions for the applicant's arrests on several misdemeanor charges in California. The applicant was advised to submit the requisite court documents explaining the final disposition of the charges in a Request for Evidence (Form I-72) dated January 17, 2007. The applicant failed to submit all of the requested documentation within the allotted period of time, and instead re-submitted previously offered evidence in support of his application for adjustment of status. The director denied the application, finding him ineligible for adjustment of status.

The applicant is represented by counsel on appeal. Counsel for the applicant argues that the applicant submitted the requested documentation, which reflects convictions for two misdemeanor offenses. Counsel maintains that the applicant's two misdemeanor convictions do not disqualify him for adjustment of status pursuant to the terms of the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

*See also* 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Additionally, an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1).

At issue in this proceeding is whether the applicant has submitted the appropriate court documents to meet his burden of establishing that he is admissible to the United States, *i.e.*, that he has not been convicted of three misdemeanors or a felony and that he is otherwise eligible to adjust to lawful permanent resident status. In this case, the applicant has failed to meet this burden because he has provided no final dispositions regarding at least one criminal charge filed against him in California.

The AAO has reviewed all of the documents in the file individually and in their entirety, including the documents the applicant previously submitted in conjunction with the Form I-485 to clarify the final disposition of his criminal convictions. The record before the AAO contains a letter from the California state Department of Justice, dated December 18, 2002. A certified criminal history record reveals that the applicant was arrested on May 15, 1992 by the Bakersfield County Sheriff's Office and charged with one count of violating section 12025(A) of the California Penal Code – *Carrying a Concealed Weapon in Vehicle*. [REDACTED]. This offense is listed as a misdemeanor. The applicant was sentenced on June 25, 1992 to one day in jail and 36 months of supervised probation. The applicant was also arrested by the West Covina Police Department on March 18, 1995 and charged with one count of violating section 20001(A) of the California Penal Code – *Hit and Run: Death or Injury*. [REDACTED]. This offense is listed as a misdemeanor. The applicant was sentenced on April 25, 1995 to 36 months of supervised probation.<sup>1</sup>

The record before the AAO also contains an FBI criminal background investigation report dated February 15, 2006. This report reveals that the applicant was arrested on November 24, 2003 by the West Covina Police Department and charged with one count of “*Hit and Run, Prop[erty] Damage*.” The record contains no final disposition regarding this charge and the applicant offers no explanation on appeal. However, the AAO observes that the minute order issued by the Municipal Court of West Covina, dated February 15, 2006 (p. 4) reveals that the applicant's probation was revoked on November 26, 2003, the applicant admitted to violating the terms of probation, and was sentenced to serve five days in jail.

The record before the AAO contains evidence of at least three arrests on criminal misdemeanor charges and certified conviction documents for two of the three. The applicant admits to two misdemeanor convictions and provides no evidence on appeal regarding the 2003 arrest. Therefore,

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<sup>1</sup> The record also indicates that the applicant was scheduled to appear in court for a probation hearing on March 30, 1998. The applicant failed to appear as scheduled. The court revoked probation and issued a bench warrant in the amount of \$15,000.

the AAO cannot determine from the record whether the arrest in 2003 resulted in a conviction, was dismissed, or whether the applicant pleaded guilty to this offense or a different offense involving this particular incident, and if the applicant was convicted, what kind of sentence was imposed by the court.

If the evidence is unavailable, the burden is on the applicant to submit credible, probative evidence of unavailability. Federal regulations provide that, in all applications or petitions for immigration benefits (permanent resident status in this case) the applicant must show that the requested evidence is unavailable. Any letter that is submitted to show that a criminal record is unavailable must be: (1) an original, (2) on letterhead, and (3) from the relevant government authority that serves as the custodian of records. 8 C.F.R. § 103.2(b)(2)(ii). The government letter must indicate the reason the record does not exist and also indicate whether similar records for the time and place are available. The letter from the Superior Court of California dated August 29, 2007 generally meets these requirements.

However, in the absence of primary evidence, the applicant must then submit relevant “secondary evidence.” If the applicant does not submit secondary evidence, they must submit at least two affidavits from persons who are not party to the application and who have direct knowledge of the event and circumstances. In criminal record cases, this would include affidavits from the prosecuting attorney, the defense attorney, the judge, or some other individual (other than derivative family members) who has direct knowledge of the disposition of the arrest.

The AAO notes that despite the request for evidence dated January 17, 2007, the applicant failed to provide final dispositions for the arrest listed in 2003 and this deficiency has not been overcome on appeal. Thus, the applicant has not met his burden of proof and his application must be denied on that ground. *See* section 245A(b)(1)(C) of the Act; 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5).

Thus, the applicant is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1). The appeal is dismissed.

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