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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:

MSC 02 109 61762

Office: NEW YORK, NEW YORK

Date: FEB 26 2009

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. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.


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, New York, New York. The decision 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 sufficient evidence to establish that he had resided continuously in the United States throughout the statutory period as required under section 1104(c)(2)(B) of the LIFE Act. The director specified, for example, that the statements and affidavits in the record submitted to demonstrate that the applicant resided continuously in the United States during the statutory period lacked credibility because the applicant failed to include copies of any documentary evidence that the individuals who wrote the statements were themselves in the United States during the statutory period.

On appeal, the applicant did not respond to the points raised by the director in the Notice of Intent to Deny and Notice of Decision. Instead, the applicant indicated through counsel that the director failed to provide any reason for having found that the statements in the record lack credibility. The applicant asserted that the evidence of record established that he is eligible for the benefit sought in this matter. The applicant did not allege any specific legal or factual error in the director's decision and did not submit additional evidence.¹ As of the date of this decision, no additional evidence has been submitted. The AAO will consider the record complete.

Any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. 8 C.F.R. § 103.3(a)(3)(iv). A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence and has not addressed the basis for denial. The appeal must therefore be summarily dismissed.

The record indicates that the New York Police Department arrested the applicant on July 4, 1990 and charged him with: driving while intoxicated under New York Vehicle and Traffic Law (NY VTL) § 1192.3; operating a motor vehicle without being duly licensed under NY VTL § 509.1; and operating a motor vehicle without having in effect the financial security (insurance) required under NY VTL § 319.3. At Criminal Court City of New York, County of Queens, on August 28, 1990, in the case having docket number: [REDACTED], the applicant pled guilty to and was convicted of operating a motor vehicle while his ability was impaired under NY VTL § 1192.1, an offense categorized as a traffic infraction under NY VTL § 1193.1. The judge ordered him to pay a \$250 fine, suspended his license for 90 days and placed him on conditional discharge for one year. 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). A misdemeanor includes any offense which is

¹ Any claim that United States Citizenship and Immigration Services (USCIS) officials have an obligation to contact the individuals who have signed the statements and affidavits in the record is not correct. The burden is on the applicant to provide affidavits that are sufficiently detailed and credible.

punishable by imprisonment of a term of one year or less, except that it shall not include offenses for which the maximum sentence is five days or less. *See* 8 C.F.R. § 245a.1(o). A conviction of operating a motor vehicle while one's ability is impaired under NY VTL § 1192.1, is a traffic infraction that may lead to a term of imprisonment of up to 15 days. *See* NY VTL § 1193.1. Thus, the AAO finds that this one traffic infraction conviction is considered a misdemeanor under the Act. One misdemeanor conviction does not affect the applicant's eligibility for the benefit sought in this matter.

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