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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: JUN 01 2009

MSC 02 323 60644

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. 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.

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

The applicant is represented by counsel on appeal. Counsel does not challenge the director's determination that the applicant has three misdemeanor convictions in the state of California, nor does he contest the immigration effects of the three convictions. The Notice of Appeal (Form I-290B) refers only to the "attached declaration and exhibits." Counsel submits the applicant's sworn affidavit dated September 4, 2005 in support of the appeal, and additional photocopies of court documents previously offered with the original application. The applicant avers in his affidavit that one of the criminal charges was dismissed pursuant to the terms of a plea agreement, and that he was unrepresented by counsel during one of the criminal proceedings and therefore did not comprehend the immigration consequences of a *nolo contendere* plea.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she 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.

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).

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.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Additionally, in order to establish admissibility pursuant to the LIFE Act, the alien must demonstrate that he or she has no disqualifying criminal convictions. An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1). "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. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"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 such alien 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)..

Under the statutory definition of "conviction" provided 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. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

The record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses in the Superior Court of California for Kern County:

A July 18, 1994 conviction for a violation of section 23152(A) of the California Vehicle Code, *Driving under the Influence*. The applicant was sentenced to 180 days in jail, suspended, and 36 months probation. [REDACTED]. The court docket indicates that the applicant proceeded without benefit of counsel but acknowledged on record an understanding of his constitutional rights, and specifically waived the right to counsel.

- A November 17, 2000 conviction for a violation of section 23152(A) of the California Vehicle Code, *Driving under the Influence*. The applicant was again given a suspended sentence and

order to serve a term of probation for 36 months. [REDACTED]. The court docket indicates that the applicant was represented by counsel at all times during the proceedings.

- A November 20, 2000 conviction for a violation of section 25269 of the California Vehicle Code – *Unlawful Display of Red Warning Light* (infraction), and a conviction for a violation of section 14601.5(A) of the California Vehicle Code – *Driving with a Suspended/Revoked License*. [REDACTED]. The applicant was sentenced to 10 days in jail on the misdemeanor offense and ordered to serve 36 months probation. The court docket indicates that the applicant proceeded without benefit of counsel but acknowledged on record an understanding of his constitutional rights, and specifically waived the right to counsel.

The applicant's argument that he did not fully comprehend the consequences of proceeding without counsel or of pleading guilty or *nolo contendere* to any of the charges is without merit. The court documents indicate that the applicant was clearly advised of the nature of the proceedings, of his constitutional rights, and of the disadvantage of proceeding without counsel. The applicant indicated on the record that he fully understood his rights and knowingly and willingly waived his right counsel. There is no indication in the record before the AAO that any of the applicant's convictions were overturned on account of procedural or constitutional defects in the underlying trial court proceedings. See *Matter of Pickering, id.*

Because of his three misdemeanor convictions, the applicant is ineligible for 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 alien convicted of a felony or three or more misdemeanors committed in the United States.

An alien applying 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 INA, 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.
