

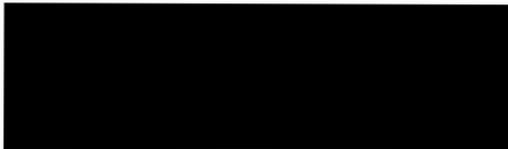
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES  
MSC 03 248 63368

Date: JUN 02 2009

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:

SELF-REPRESENTED

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 director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 of his convictions for battery and battery against a spouse in the state of California. The director concluded that both offenses are crimes involving moral turpitude (CIMT), thus rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182 (a)(2)(A)(i)(I), Section 1104(c)(2)(D)(ii) of the LIFE Act.

The applicant represents himself on appeal. He does not challenge the director's determination regarding his criminal convictions in the state of California, nor does he contest their effect on his application for permanent residence (Form I-485). The applicant seeks a waiver on humanitarian grounds.

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).

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.12(f).

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 felony offense in the Superior Court of California for Kern County:

- A February 9, 2007 conviction for a violation of section 23153(A) of the California Vehicle Code, *Driving under the Influence Cause Bodily Injury*. [REDACTED] The applicant was sentenced to 9 months in jail and 36 months probation. This offense is marked as a felony conviction in the court docket.

Other records in the file reveal that the applicant was also convicted of the two misdemeanor offenses listed by the director in the Notice of Denial dated August 22, 2007: a conviction on or about May 13, 1998 for one count of violating section 242 of the California Penal Code – *Battery*, and for one count of violating section 243(E)(1) of the California Penal Code – *Battery Against a Spouse*. [REDACTED] Although not entirely clear from the record before the AAO, it appears that the applicant was sentenced to 24 months probation.

Additionally, the record indicates that the applicant was arrested on or about October 1, 2007 for violating section 14601.2(A) of the California Vehicle Code – *Driving with Suspended License*. No record of final court disposition for this charge appears in the file before the AAO.

The AAO has reviewed all of the documents in the file in their entirety. It is clear that the applicant has two misdemeanor offenses, at least one of which is a CIMT (battery against a spouse). Independent of the other criminal convictions, this offense is sufficient to render the applicant ineligible for permanent resident status. *See Grageda v. U.S. I.N.S.*, 12 F.3d 919 (9<sup>th</sup> Cir. 1993).

Additionally, the applicant's 2007 felony conviction also makes him statutorily ineligible for permanent resident status. 8 C.F.R. § 245a.18(a)(1). Because of the applicant's three criminal convictions (one felony and two misdemeanor offenses), the applicant is ineligible for permanent resident status under the LIFE Act.

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.

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