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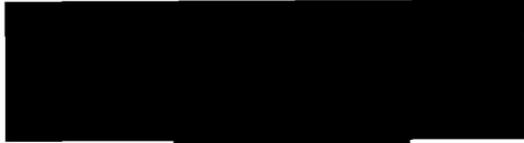


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 248 63698

Office: LOS ANGELES

Date:

MAR 31 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).

IN 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 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 remanded for further action, 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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director concluded that the applicant had been convicted of at least three misdemeanors in the United States, and accordingly, denied the application.

On appeal, the applicant asserts that his misdemeanor convictions have been reduced to infractions and, therefore, he is eligible for the benefit being sought. The applicant submits court documents from the Los Angeles County, Superior Court indicating that two of his misdemeanor convictions had been reduced to infractions.

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. Section 245A(b)(1)(C)(ii) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C)(ii); 8 C.F.R. §§ 245a.11(d)(1) and 245a.18(a)(1).

“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 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 record reflects the applicant’s criminal history in the state of California:

1. On March 3, 1994, the applicant was arrested and subsequently charged with violating section 23152(a) VC, *driving under the influence* and section 23109 (c) VC, *exhibition of speed*. On July 19, 2004, the applicant was convicted of violating section 23109(c) VC, a misdemeanor. The applicant was placed on probation for one year and ordered to pay a fine. On December 20, 2007, a motion to reduce the misdemeanor conviction to an infraction was filed. On January 18, 2008, the motion was granted pursuant to section 17(b)(4) PC. Case no. [REDACTED]
2. On March 25, 1998, the applicant was arrested and subsequently charged with violating section 532(a) PC, *false representation*. On July 20, 1998, a charge of violating section 602(c) PC, *trespass-maliciously injure, etc.*, was added. The applicant was subsequently convicted of violating section 602(c) PC, a misdemeanor. The applicant was placed on probation for two years, ordered to pay a fine and perform community service. The remaining charge was dismissed. Case no. [REDACTED]
3. On October 18, 2003, the applicant was arrested and subsequently charged with violating section 23152(a) VC, *driving under the influence* and section 23109 (c) VC, *exhibition of speed*. On February 5, 2004, the applicant was convicted of violating

section 23109(c) VC, a misdemeanor. The applicant was placed on probation for two years and ordered to pay a fine. The remaining charge was dismissed. On November 9, 2007, the conviction was expunged in accordance with section 1203.4 PC. On January 18, 2008, a motion to reduce the misdemeanor offense to an infraction was granted pursuant to section 17(b)(4) PC. Case no. [REDACTED]

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, 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 Roldan*, 22 I&N Dec. 512 (BIA 1999).

The Board of Immigration Appeals (BIA) revisited the issue in *Matter of Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002) and concluded that Congress did not intend to provide any exceptions from its statutory definition of a conviction for expungement proceedings pursuant to state rehabilitative proceedings.

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the BIA found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. The BIA reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains "convicted" for immigration purposes.

It is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all U.S. Citizenship and Immigration Services offices.

The applicant is ineligible for the benefit being sought due to his three misdemeanor convictions. 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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