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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

LA

FILE:

Office: Baltimore

Date: **AUG 04 2004**

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, and because of the applicant's having been convicted of offenses rendering her ineligible for adjustment to permanent resident status under the LIFE Act.

On appeal, the applicant asserts that any inadmissibility arising from her prior offenses could be waived under section 212(h)(1)(B) once it was determined that her exclusion would result in extreme hardship to her U.S. citizen child. She also requested that her application be changed and adjudicated pursuant to Subsection 1502. However, the current application was submitted under LIFE legalization and must, therefore, be adjudicated as such.

The applicant appears to be represented; however, the individual identified as representing the applicant is not authorized to do so under 8 C.F.R. § 292.1 or § 292.2. Therefore, the notice of decision will be furnished only to the applicant.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is inadmissible and, therefore, ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act.

"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. 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, or the Act), formerly section 212(a)(9) of the Act.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. DeGeorge*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

The record reveals the applicant has been convicted of the following offenses:

- Theft Less \$300 Plus Value, a misdemeanor; and

- Illegal use of credit card/credit card fraud, a felony.

The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act as both offenses constitute crimes involving moral turpitude.

On appeal, the applicant asserts that any inadmissibility arising from her prior offenses could be waived under section 212(h)(1)(B) once it was determined that her exclusion would result in extreme hardship to her U.S. citizen child. However, pursuant to 8 C.F.R. § 245a.18(c)(2), there is no waiver available to an applicant for permanent resident status under section 1104 of the LIFE Act who is inadmissible under 212(a)(2)(A)(i)(I). Moreover, as noted previously, an alien who has been convicted of a felony is inadmissible and, therefore, ineligible for permanent resident status under 8 C.F.R. § 245a.18(a).

An applicant may not adjust status to that of permanent resident under the LIFE Act if he or she is inadmissible to the U.S. under any provisions of section 212(a) of the INA. As the applicant is inadmissible under section 212(a)(2)(A)(i)(I) and ineligible under 8 C.F.R. § 245a.18(a), she may not apply for adjustment to permanent residence under section 1104 of the LIFE Act.

The district director, in his decision, also determined the applicant failed to establish she entered the United States before January 1, 1982 and resided continuously in an unlawful status through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act. However, as the applicant has already been determined to be inadmissible as a result of her prior criminal offenses, the issue of her continuous residence need not be addressed further.

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