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U.S. Citizenship
and Immigration
Services



FILE:



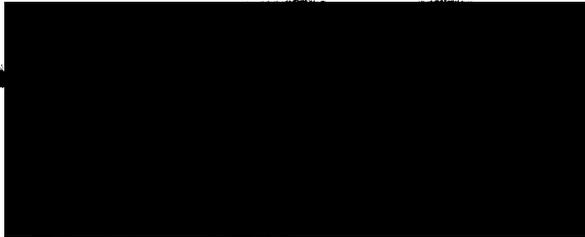
Office: LOS ANGELES

Date:

NOV 30 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. Any further inquiry must be made to that office.

Robert P. Wiernann, Director
Administrative Appeals Office

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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 on appeal. The appeal will be dismissed.

The district director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director also concluded that the applicant had been convicted of three misdemeanors and was inadmissible under section 212(a) of the Immigration and Nationality Act (the Act). Accordingly, the director denied the application.

On appeal, the applicant asserts that she committed the crimes out of necessity. The applicant requests that her application be reconsidered as she has been rehabilitated.

"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 the term "felony" of this section. 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.

The record reflects the applicant's criminal history:

- 1) on January 21, 1983, the applicant was arrested by the New York Police Department for petty larceny and possession of stolen property, both misdemeanors. On February 8, 2003, both offenses were dismissed. [REDACTED]
- 2) on December 26, 1985 the applicant was arrested by the Los Angeles Police Department and charged with disorderly conduct – prostitution, a misdemeanor. On December 30, 1985, the applicant was convicted of a misdemeanor offense and sentenced to serve time in jail. Case no. [REDACTED]
- 3) on January 14, 1988, the applicant was arrested by the Los Angeles Police Department and charged with disorderly conduct – prostitution, a misdemeanor. On January 14, 1988, the applicant was convicted of a misdemeanor offense and sentenced to serve time in jail. [REDACTED]
- 4) on August 11, 1988, the applicant was arrested by the Los Angeles Police Department for disorderly conduct – prostitution. On August 12, 1988, prosecution was rejected.
- 5) on November 20, 1993, the applicant was detained by the Los Angeles Police Department for shoplifting. On December 22, 1993, the applicant was released from prosecution.
- 6) on April 14, 1995, the applicant was arrested by the Los Angeles Police Department and charged with theft of property, a misdemeanor. On April 28, 1995, the complaint was amended to include a charge of theft of property, an infraction. The applicant was convicted of this infraction offense and fined. The misdemeanor offense was dismissed. [REDACTED]
- 7) on July 22, 2000, the applicant was arrested by the Buena Park Police Department for battery and assault, both misdemeanors. On June 12, 2001, both offenses were dismissed. Case no. [REDACTED]

The director, in denying the application, indicated that the applicant had been convicted of three misdemeanors. However, the court disposition for number six above, clearly indicates that the applicant was convicted of an infraction not a misdemeanor. As such, the record as it stands reflects only two misdemeanor convictions.

Disorderly conduct - prostitution is a crime involving moral turpitude. *Matter of S- L-*, 3 I&N Dec. 396, 397 (C.O. 1948, BIA 1949). Therefore, the applicant's convictions for these offenses render her inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although CIS regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous residence since before January 1, 1982 through May 4, 1988, the applicant provided the following documentation:

- (a) an insurance application and policy dated August 21, 1984 and September 11, 1984 respectively;
- (b) her child's school transcript from September 1982 through June 1983; and
- (c) a copy of a notarized statement from an acquaintance indicating that the applicant resided in the State of New York in 1980 and 1981.

The director determined that the documentation submitted with the applicant's LIFE application was insufficient to establish entry prior to January 1, 1982 and of continuous residence through May 4, 1988. On July 30, 2003, the director issued a Notice of Intent to Deny, which provided the applicant the opportunity to submit additional documentation to overcome the adverse information. The applicant, however, failed to respond to the director's notice. Likewise, the applicant has failed to submit any documentation on appeal to overcome the director's finding.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.2(12)(e).

Given the absence of any contemporaneous documentation, along with the applicant's reliance on minimal documentation, it is concluded that she has failed to establish continuous residence in the U.S. for the required period. In addition, the applicant is ineligible for the benefit being sought due to her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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.