



U.S. Citizenship
and Immigration
Services

Handwritten initials "LJ" in the top center of the page.

[Redacted block]

FILE:

[Redacted]

Office: Los Angeles

Date:

SEP 03 2004

IN RE:

Applicant:

[Redacted]

PETITION: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In addition, the district director determined that the applicant's conviction for theft of property constituted a crime involving moral turpitude, thereby rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, or the Act) and, therefore, ineligible for adjustment to permanent resident status under the LIFE Act.

On appeal, counsel for the applicant asserts that the district director's denial fails to set forth the specific reasons for denial of the application. This assertion appears to be well-founded. In this case, counsel submitted a detailed, point-by-point rebuttal to the information contained in the notice of intent to deny. Yet, there is no indication that the issues raised by counsel in his rebuttal, or the evidence provided by the applicant in support of her application, were ever reviewed or addressed prior to the issuance of the denial.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. See *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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).

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. Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the Act (crimes involving moral turpitude) may *not* be waived.

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, counsel for the applicant furnished the following evidence:

- A Form I-94 Arrival/Departure Record, indicating the applicant was admitted on September 2, 1981 as a B-2 visitor for pleasure, with stay authorized to September 15, 1981. Counsel includes this information in order to demonstrate that the applicant's continued presence in the U.S. after September 15, 1981 indicates that she was, thereafter, in an unlawful immigration status;
- Photocopied air mail envelopes addressed to the applicant at her residence in Brooklyn, New York, including postmarks which carry the following dates: September 30, 1981, October 7, 1981; December 10, 1981, December 27, 1981, April 8, 1982, June 9, 1983, August 12, 1983, December 20, 1983, June 5, 1984, December 8, 1984, September 21, 1985, December 31, 1985, January 10, 1986, March 16, 1986, May 19, 1986, September 5, 1986, November 28, 1986, March 9, 1987, June 1, 1987, and May 5, 1988;
- A Child Support Referral from the County of Los Angeles Department of Social Services dated August 17, 1982, which is addressed to the applicant at her residence in Los Angeles;
- A County of Los Angeles Certificate of Live Birth indicating the applicant's son was born on May 17, 1982 at Queen of Angels Medical Center in Los Angeles, California;
- A Supplemental Report of Income and Expenses from the Metro North Family District, Los Angeles, California, which is dated August 8, 1983 and is addressed to the applicant;
- A Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, which was signed by the applicant on October 24, 1989;
- Rent receipts in the applicant's name dating from February 21, 1985 through December 14, 1985, and from January 1, 1986 through September 15, 1986;
- A photocopy of a correspondence from CIGNA Healthplan of California dated May 2, 1985, which notifies the applicant that new membership cards are enclosed;
- A Los Angeles County Food Stamp Issuance Card dated May 20, 1985, which is issued to the applicant;
- A Notice of Change of Terms of Tenancy which is issued to the applicant and dated July 1 1986;

- An affidavit from [REDACTED] attesting to the applicant having resided in Los Angeles, California, from January 1, 1987 to January 29, 1988. The affiant bases his knowledge on his friendship with the applicant;
- A form affidavit from [REDACTED] attesting to the applicant having resided in Los Angeles, California, from December 1981 to December 1984. The applicant bases his knowledge on his friendship with the applicant;
- An employment affidavit from [REDACTED] attesting to the applicant having been employed at the affiant's clothes factory as an operator from September 1983 to May 1985; and
- An employment affidavit dated October 10, 1988 from [REDACTED] attesting to the applicant having been employed at the affiant's clothes factory as an operator since August 1985.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish residence and specify that "any other relevant document" may be submitted. Affidavits in certain cases can effectively meet the preponderance of evidence standard. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. In this case, the applicant has submitted at least four affidavits attesting to her residency in the U.S. as well as her employment during the period in question. The district director has not established that the information included in the affidavits was inconsistent with the claims made on the application, or that it was of a false or contradictory nature. These documents have been furnished by affiants who have provided their current addresses and phone numbers and have indicated their willingness to come forward and testify in this matter if necessary and, as such, may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

These affidavits provided by the applicant in support of her claim to continuous unlawful residence have been augmented by the submission of extensive contemporaneous evidence of residence. This contemporaneous evidence includes a U.S. Immigration and Naturalization Service (INS) Form I-94 Arrival/Departure Record, which shows not only the applicant's date of admission but also her period of authorized stay. The applicant also provides photocopies of Air Mail envelopes addressed to the applicant carrying dates from 1981 through 1988, rent receipts, birth certificates, social service documents, and tenancy agreements all of which include dates falling within the chronological period in question, *i.e.*, from prior to January 1, 1982 through May 4, 1988.

The evidence provided by the applicant supports, by a preponderance of the evidence, that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

In her decision, the district director also determined that the applicant's conviction for theft of property constituted a crime involving moral turpitude, thereby rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act and, therefore, ineligible for adjustment to permanent resident status under the LIFE Act. The record shows that, on July 11, 2001, the applicant was convicted of theft of property, in violation of section 484(A) of the California State Penal Code -- a misdemeanor.

However, section 212(a)(2)(A)(ii)(II) of the Act provides for an *exception* where an alien was convicted of a single misdemeanor in which the maximum penalty possible did not exceed imprisonment for one year *and* where the alien was not sentenced to a term *exceeding* six months. As noted by the applicant's attorney, under section 19 of the California State Penal Code, except where a different punishment is prescribed, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail *not exceeding* six months, or by fine not exceeding \$1,0000, or by both. The record shows the applicant's sentence not only involved *less* than six months imprisonment but that the imposition of the applicant's sentence was suspended. Therefore, the applicant's conviction *alone* is not sufficient to establish her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.