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U.S. Citizenship
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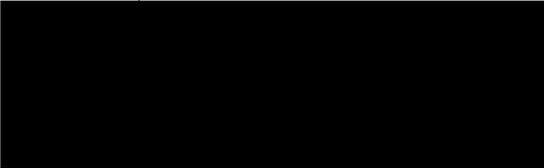
Office: Baltimore

Date:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant was in a lawful status as a F-1 nonimmigrant student from 1979 to 1986 and, therefore, 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. The district director further determined that the applicant had failed to establish that he was admissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA), because he had failed to provide requested court documents relating to his arrest for two separate crimes involving moral turpitude in the United States. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel contends that the applicant is admissible because he was only charged with and not convicted of the criminal charges cited by the district director.

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 the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 INA that were most recently in effect before the date of the enactment of this Act shall apply.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his or her unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

The record shows that the applicant submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA, on May 3, 1988. On the Form I-687 application, the applicant indicated that he first entered the United States with a nonimmigrant F-1 student visa issued in 1978, and that he violated such status by working without authorization from the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) from 1979 to 1981. In support of his claim, the applicant has submitted a Social Security Administration computer printout as well as a Social Security Administration Earnings Statement reflecting wages earned by the applicant beginning in 1979 through to 1986. The record contains no evidence demonstrating that the applicant was authorized to accept employment as a F-1 student. Clearly, the applicant entered the United States as a nonimmigrant F-1 student in 1979 and violated such status by engaging in unauthorized employment before January 1, 1982. The record contains sufficient evidence to establish that such unlawful status was known to the Government as of this date pursuant to *Matter of P, supra*. Furthermore, the record contains sufficient evidence to establish that applicant continued to reside in the United States to May 4, 1988. Thus, the applicant has demonstrated that that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, and overcomes this particular basis of the district director's denial.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT.

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such crime. Section 212(a)(2)(A)(i)(I) of the INA. Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the INA, (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).

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 Roldan*, Int. Dec. #3377 (BIA 1999).

The record contains a Federal Bureau of Investigation printout that indicates the applicant was arrested by the Baltimore Police Department on October 10, 1988 and charged with strong-arm assault and possession of a deadly weapon (open knife) with intent to injure. Assault with a deadly weapon is a crime involving moral turpitude. *Matter of O-*, 3 I. & N. Dec. 193 (BIA 1948).

Both counsel and the applicant have consistently stated that he was arrested for such offenses, but that all charges were dismissed in court in Baltimore, Maryland. In support of this claim, the applicant submitted photocopies of documents relating to a Petition for Expungement relating to a 1988 arrest that was filed in the District Court of Maryland for the Baltimore City District on January 29, 2003. The documents reflect that the applicant actively pursued the Petition for Expungement and certified his compliance with the conditions necessary for an Order of Expungement up through July 31, 2003. However, the documents fail to establish that an Order of Expungement was actually granted, that such an order was directly related to those charges cited by the district director, or that such order related merely to the applicant's arrest as opposed to conviction of such charges. Consequently, it must be concluded that the applicant has not demonstrated that he is admissible as he has failed to establish by a preponderance of the evidence that he was not convicted of crimes involving moral turpitude as cited by the district director.

An alien applying for adjustment of status has the burden of proving 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 under the provisions of section 212(a) of the INA and is otherwise eligible for adjustment of status under 8 C.F.R. § 245a. 8 C.F.R. § 245a.12(e)(5). The applicant has failed to meet this burden because he has not provided necessary evidence to establish that he is admissible under section 1140(c)(2)(D)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). *See* 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." *See* 8 C.F.R. § 245a.14.

The applicant neither claimed nor documented that he had applied for class membership in any of the requisite legalization lawsuits in his LIFE Act application. Rather, the record shows that the applicant timely filed a Form I-687 legalization application on May 3, 1988. The Form I-687 legalization application was ultimately approved on August 5, 1993. However, the applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Residence under Section 245A of the INA, was denied on April 23, 1999, as

he had failed to file this application within forty-three months of being granted temporary residence. Therefore, the applicant's temporary residence was terminated as he had failed to file the Form I-698 adjustment application within forty-three months of the date he was granted temporary resident status pursuant to 8 C.F.R. § 245a.2(u)(1)(iv). Section 1104 of the LIFE Act contains no provision allowing for the reopening and reconsideration of the matter, as the original application for temporary resident status under section 245A of the INA had been filed by the applicant in a timely manner.

The fact that an alien filed a timely legalization application does not establish eligibility to adjust to permanent residence under the LIFE Act. The legalization class-action lawsuits discussed above relate to aliens who claim they did not file applications in the 1987-1988 application period because they were improperly dissuaded by the Service from doing so. The applicant provided no explanation as to why he would have sought membership in the legalization class-action lawsuits as he had not been improperly dissuaded by the Service and did file a timely application on May 3, 1988.

The applicant has failed to provide evidence establishing that he filed a written claim for class membership in any of the aforementioned legalization class-action lawsuits prior to October 1, 2000. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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