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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: LOS ANGELES Date: SEP 29 2005

IN RE: Applicant: [REDACTED]

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

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, Los Angeles, California and is now before the Administrative Appeals Office 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 from before January 1, 1982 through May 4, 1988. The district director also denied the application because the applicant had been convicted of at least three misdemeanors in the United States.

On appeal, counsel asserts that the applicant had been convicted of one burglary offense, which was subsequently expunged.

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).

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. 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. The documents that have been furnished 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.

The documentation 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.

The regulation at 8 C.F.R. § 245a.18(a) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to LPR status.

"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," pursuant to 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 November 25, 1983, the applicant was arrested and subsequently charged with violating section 459 PC, burglary, three counts. On October 17, 1984, the applicant pled guilty to all counts. On July 13, 1988, the misdemeanor convictions were expunged in accordance with section 1203.4 PC. Case no. [REDACTED]
2. on December 11, 1998, the applicant was arrested and subsequently charged with violating section [REDACTED] VC, driving under the influence, and section 23152(b) VC, driving with .08 percent or more alcohol in the blood. On January 6, 1999, the applicant was convicted of driving with .08 percent or more alcohol in the blood. The remaining charge was dismissed. On November 10, 2003, the misdemeanor conviction was expunged in accordance with section 1203.4 PC. Case no. [REDACTED]

Counsel's assertion that the applicant was only convicted of one burglary offense is not supported by the record. The fact that the offenses occurred on the same day has no relevance in this matter. The applicant was convicted of three separate misdemeanor offenses and the court disposition clearly indicates that on October 17, 1984, the applicant pled guilty to "all counts."

Burglary is considered a crime involving moral turpitude only when it is established that the offense was committed **with the intent to commit a crime involving moral turpitude**, *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). The court records contained in the file do not describe the circumstances of the offense and, therefore, the applicant's **intent** is not known. Therefore, at this time, the record is not sufficient to establish the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act.

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), 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. The Board of Immigration Appeal (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. Thus, if a court with jurisdiction vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. If, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains "convicted" for immigration purposes. *Matter of Pickering*, 23 I&N 3493 (BIA 2003). Despite the expungements of the applicant's convictions, the applicant remains convicted, for immigration purposes, of the four offenses noted above

The applicant is ineligible for the benefit being sought due to his four misdemeanor convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). 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.