



U.S. Citizenship  
and Immigration  
Services

U.S. Department of Homeland Security  
Bureau of Citizenship and Naturalization  
Division of Naturalization

Administrative Appeals Office



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FILE: [Redacted]

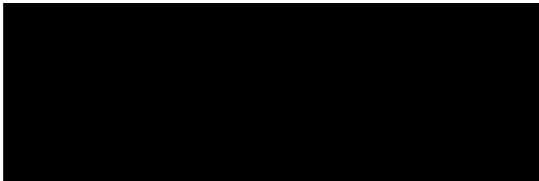
Office: Spokane

Date: SEP 30 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. 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 District Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had failed to sufficient documentation to establish that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. In addition, the district director determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(1) of the Immigration and Nationality Act (INA), because she had been convicted of crime involving moral turpitude in the United States. The district director also determined that this particular ground of inadmissibility could not be waived pursuant to 8 C.F.R. § 245a.18(c)(2). 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 record contains no evidence to establish that the applicant had ever been convicted of any crime, much less the specific crime cited by the district director. Counsel contends that the applicant demonstrated that she had sufficient knowledge of English and that she is currently enrolled in English classes.

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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 man 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).

While counsel was correct in asserting that the record did not previously contain evidence to establish that the applicant had ever been convicted of a crime, the record now contains documentation from the Benton County District Court in the State of Washington reflecting that she had in fact been convicted of theft in third degree a misdemeanor violation of section 9A.56.050 of the Revised Code of Washington on July 12, 1996. The documentation in the record further reflects that the applicant was sentenced to 180 days in jail with 179 days of that sentence suspended and a fine of \$250.00.

While the district director was correct in concluding that the applicant had been convicted of a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the INA, the director did not consider whether the applicant was still considered to be inadmissible under the following exceptions contained at section 212(a)(2)(A)(ii) of the INA:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In this case, the applicant was born on May 13, 1966 and convicted of a crime involving moral turpitude at the age of thirty on July 12, 1996. Therefore, the exception contained at section 212(a)(2)(A)(ii)(I) of the INA does not apply to the applicant as she was over 18 years of age at the time of her conviction. However, a conviction under section 9A.56.050 of the Revised Code of Washington for misdemeanor theft in the third degree is punishable by a fine not exceeding five thousand dollars (\$5,000.00), or by imprisonment in the county jail for not more than one year, or both. Clearly, the exception contained at section 212(a)(2)(A)(ii)(II) of the INA does apply to the applicant as she convicted of misdemeanor theft in the third degree and was sentenced to 180 days in jail with 179 days of that sentence suspended. As the exception contained at section 212(a)(2)(A)(ii)(II) of the INA specifically applies to the applicant, she cannot be considered inadmissible under section 212(a)(2)(A)(i)(I) of the INA, despite the fact that she has been convicted of a crime involving moral turpitude. Therefore, the applicant has overcome this particular basis of the denial.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he meets the requirements of section 312(a) by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or “[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States.... 8 C.F.R. § 245a.17(a)(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government.... 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “...either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview....”

8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)] (a)(2) and (a)(3) of this section. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE application, on June 9, 2003 and again on January 5, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of English. Furthermore, the applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant in this case does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2). Consequently, counsel’s assertion that the application should be approved because the applicant was taking English classes cannot be considered as persuasive.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis.

It is noted that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA)[formerly numbered as section 212(a)(19) of the INA] because she attempted to gain admission to the United States through fraud or misrepresentation at El Paso, Texas on December 16, 1989. However, even if the applicant had submitted a Form I-690, Application for Waiver of Grounds of Inadmissibility, and such waiver had been granted, the fact remains that the applicant remains ineligible to adjust to permanent residence under the provisions of the LIFE Act because she failed to comply with the basic citizenship skills requirement as discussed above.

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