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U.S. Citizenship
and Immigration
Services

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JUL 30 2007

FILE:

MSC 02 005 61574

Office: LOS ANGELES

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. 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, Chief
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 director denied the application because the applicant 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 director also determined that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1). The district director further determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA) because he had been convicted of a crime 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 documentation to demonstrate his residency in the United States from June 1981 through May 4, 1988, and that the director pointed to no requirement that the applicant's absence from the United States could not exceed 45 days. Counsel further asserts that the applicant has not been convicted of crimes involving moral turpitude. Counsel submits a brief in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although Citizenship and Immigration Services (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 a May 28, 2004 affidavit executed during his LIFE Act adjustment interview, the applicant stated that he first entered the United States in June 1981, and that he lived with his brother in Los Angeles for approximately two years and worked odd jobs. The applicant also stated that in 1987, he left the United States to go to Argentina because his mother was ill. He stated that he remained there for two months.

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

1. A copy of an August 10, 1993 statement from the Santa Rosa Church in San Fernando, California, which stated that, according to church records, the applicant had been a member of the church since 1981, and had resided at [REDACTED] in Mission Hills, California.
2. Copies of receipts from [REDACTED] in Los Angeles, dated August 1 and 12, 1981; January 3 and 8, 1982; April 3, 1982; June 6 and 12, 1982; March 12 and 28, 1982, and which show they were issued to the applicant.
3. A copy of a receipt from a towing company in Santa Monica, California, showing the applicant as the customer. The receipt is dated September 21, 1981; however, the dates show tracing of the numbers and it is unclear as to what date was originally contained on the document.
4. A copy of a June 3, 1982 receipt with the applicant's name; however, the document does not list a vendor or an address for the vendor or the applicant.
5. A copy of an August 3, 1982 invoice from Sunbeam Appliance Service Company in Anaheim, showing the applicant's name and address in California.
6. A copy of an undated letter from [REDACTED] in Los Angeles, certifying that the applicant had worked for the company "as outside labor doing jewelry repairs from 1982 to 1986." The signature on the letter is illegible and the letter does not reflect the position of the person signing it. Additionally, the letter does not indicate the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. *See* 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted no corroborative evidence, such as a Form 1099-MISC, Miscellaneous Income, check stubs, pay vouchers, or similar documentary evidence to substantiate his employment with [REDACTED].
7. A copy of a July 12, 1985 receipt from Talli Imports in Los Angeles with the applicant's name.
8. A copy of a February 25, 1985 PS Form 3806, Receipt for Registered Mail, which shows the applicant as the sender and also that it was mailed to '[REDACTED]'. No address is shown for the recipient.
9. A copy of an April 1995 receipt from Pasadena Coin Co. in Pasadena, California, showing the applicant as the purchaser of a silver coin. The applicant also submitted a copy of the same receipt

with other items listed on it. The applicant's name appears to have been written over another's, and the list of items is written over that shown on the receipt for the silver coin.

10. A copy of a July 29, 1993 letter from [REDACTED] who identified himself as the president of [REDACTED] in Los Angeles. [REDACTED] certified that the applicant had worked for the company since October 1985. [REDACTED] did not indicate the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. *Id.* The applicant also submitted copies of Forms 1099-MISC dated 1982 through 1988 issued to the applicant by [REDACTED]. The applicant submitted no documentary evidence to explain why the company issued Forms 1099-MISC to him during periods in which he allegedly did not work for the company. Further, there is no evidence that these documents were submitted to the Internal Revenue Service. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). We note for the record that the applicant's brother is named [REDACTED]; although no evidence in the record indicates that the applicant's brother and [REDACTED] of [REDACTED] are the same person.
11. A copy of an August 3, 1993 letter from Marina International Jewelers in Marina Del Rey, California, signed by [REDACTED], in which he verified that the applicant "was engaged as a[n] outside contractor, doing jewelry repairs & special orders" for the company from January 1986 to April 1991. [REDACTED] did not indicate his position with the company, and his letter does not comply with the provisions of 8 C.F.R. § 245a.2(d)(3)(i) in that it does not indicate whether the information regarding the applicant's employment was taken from company records nor did it indicate the applicant's address at the time he worked for the company. The applicant submitted no documentary evidence to corroborate his association with Marina International Jewelers
12. A copy of an August 12, 1993 letter from [REDACTED] who identified herself as the West Coast Branch Manager of North American Watch Corporation in Los Angeles. [REDACTED] stated that the applicant had been an "outside contractor" with the company "from approximately January 1986 till present." The letter did not indicate the source of the information relied upon by [REDACTED] regarding the applicant's employment and does not indicate the applicant's address at the time of his employment. *Id.*
13. A copy of an August 11, 1993 letter from [REDACTED], who identified herself as the president of Old World Chain, Inc. [REDACTED] stated that the applicant had been "an outside contractor" for the company from January 1986 to the present. [REDACTED] letter, as with other employment verification letters submitted by the applicant, failed to include all of the information required by 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted an Old World Chain business card with his name; however, the card contains no information that would date the applicant's association with the company.
14. A copy of a March 10, 1986 receipt from [REDACTED] Auto Electric Shop in Los Angeles showing the applicant as the customer.

15. A copy of a March 20, 1986 receipt from Radio Shack in Glendale, California, showing the applicant as the customer.
16. A copy of an October 15, 1986 parking ticket from the City of Glendale, California. The ticket indicates that the registered owner of the vehicle was "J.D." Nothing on the document or information submitted by the applicant indicates that the ticket was issued to him or that he was the registered owner of the vehicle.
17. A copy of a December 12, 1986 PS Form 3806, showing the applicant as the customer.
18. A copy of the applicant's California driver's license issued on September 9, 1987.

The applicant submitted various documents, including a copy of a receipt from Botica del Paeblo, a copy of a January 4, 1985 invoice from Metro Mufflers, and a copy of a May 19, 1986 receipt from Baby Photographers of America. All of these documents contain the single name [REDACTED]. Nothing in these documents, however, indicates that they were issued to the applicant. The applicant also submitted a copy of "House Rules" for an apartment. However, the year in the date of the document is illegible and the applicant is not identified on the document. Therefore, it is not probative in establishing the applicant's continued residency in the United States during the requisite time frame. The applicant also submitted copies of federal income tax returns. However, these documents are either illegible or subsequent to the required period; therefore, they are not evidence of the applicant's continued residency in the United States from prior to January 1, 1982 to May 4, 1988.

While the applicant submitted letters to verify his employment with various jewelry companies during the qualifying period, none of the documents contain all of the information required by the regulations. Further, the applicant submitted corroborative documentation of his employment only from Jofer Jewelers. The copies of the Forms 1099-MISC purport to show that the applicant worked for the company from 1982 through 1988. However, according to the July 29, 1993 letter from [REDACTED] the applicant began working for Jofer Jewelers in October 1985. The applicant also submitted questionable receipts from Pasadena Coin Company, purporting to show purchases by the applicant on a receipt that was not his own. Given these unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish continuous residence in the United States for the required period.

The director further determined that the applicant had remained outside the United States for two months and therefore exceeded the 45-day limit set by the INA. This determination was based on the applicant's statement during his LIFE Act adjustment interview that he had traveled to Argentina to visit his sick mother.

The applicant does not deny this absence or its length. On appeal, counsel asserts that the director lacked a legal foundation to find that the applicant's extended absence from the United States made him ineligible for benefits under the LIFE Act.

"Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

According to his own sworn statement, the applicant remained in Argentina for two months, thus exceeding the 45 days set forth in the statute and regulation. However, while not addressed in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

No evidence in the record establishes in the instant case, that the applicant's admitted prolonged absence from the United States was due to emergent reasons. The applicant stated that he left the United States to visit his sick mother. However, he does not allege that his return was delayed due to emergent reasons and provides no explanation as to why his return to the United States could not be accomplished within 45 days.

Accordingly, the applicant's two-month stay in Argentina during 1987 interrupted his "continuous residence" in the United States. The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the director determined that the applicant was inadmissible into the United States because he had been convicted of crimes involving moral turpitude.

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 (1951).

Section 212(a)(2)(A)(ii) of the INA provides:

- (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).

The record reflects that on December 17, 1992, the applicant was convicted in the Municipal Court of Los Angeles, Van Nuys Judicial District, of a violation of California Penal Code 647(a), disorderly conduct: engaging in lewd or dissolute conduct at any public place or soliciting another to engage in such an act. The applicant was sentenced to probation for twelve months, to pay a fine of \$150 or serve five days in jail. The record further reflects that on January 13, 2004, the applicant was again convicted in the Municipal Court of Los Angeles, Central Arraignment Division, of a second violation of California Penal Code 647(a). The applicant was placed on twenty-four months probation and ordered to pay a fine of \$300.

Without citing supporting authority, the director determined that the applicant's convictions were for crimes involving moral turpitude and determined that, as the applicant had two convictions for these types of crimes, he was ineligible for admission into the United States, as he did not qualify for the petty offense exception to the act.

On appeal, citing *Matter of H-*, 7 I&N Dec. 301 (BIA 1956); *Matter of Mueller*, 11 I&N Dec 268 (BIA 1965) and *Matter of P-*, 2 I&N Dec. 117 (BIA 1944), counsel asserts that indecent exposure has been held not to constitute a crime involving moral turpitude. However, the applicant was not convicted of indecent exposure in violation of California Penal Code 314 but of soliciting to engage or engaging in lewd or dissolute conduct in violation of California Penal Code 647(a). Engaging in lewd or dissolute conduct or soliciting another to do the same is a crime involving moral turpitude. *U.S. v. Nunez-Garcia*, 262 F. Supp. 2d 1073 (C.D. Cal. 2003); *Matter of Alfonzo-Bermudez*, 12 I&N Dec. 225 (BIA 1967).

Accordingly, the applicant is ineligible for admissibility into the United States, as he has been convicted of two crimes involving moral turpitude. Further, the applicant has not established that he resided continuously in the United States for the requisite period of that his admitted absence from the United States in 1987 was 45 days or less or was prolonged due to emergent reasons.

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