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**U.S. Citizenship  
and Immigration  
Services**

42

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: SEP 14 2007

MSC 01 275 60552

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:

[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. Any further inquiry must be made to that office. 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 district director determined that the applicant had been convicted of a crime involving moral turpitude, and therefore is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

On appeal, counsel asserts that the application was "erroneously denied . . . on the basis that he was convicted of a felony." Counsel submits additional documentation on appeal. Counsel, however, did not address the director's determination that the applicant had been convicted of a crime 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 Act. 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 Act. 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).

A review of the record reveals that on April 16, 1991, the applicant was convicted of receiving or buying known stolen property in violation of California Penal Code section 496.1. He was sentenced to 365 days in the county jail, restitution fine of \$10,000, and placed on three years probation. Receiving goods that are known to be stolen is a crime involving moral turpitude. *Wadman v. INS*, 329 F. 2d 812 (9<sup>th</sup> Cir. 1986); *Matter of A-*, 7 I&N Dec. 626 (BIA 1957).

Pursuant to section 212(a)(2)(A)(ii) of the INA, the applicant may still be admissible to the United States if he meets either of the following exceptions:

(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 January 13, 1958 and convicted of a crime involving moral turpitude at the age of 33 on April 16, 1991. Therefore, the exception contained at section 212(a)(2)(A)(ii)(I) of the INA does not apply to the applicant as he was over 18 years of age at the time of his conviction. A conviction for receiving stolen property is punishable by imprisonment for not more than one year. However, the applicant was sentenced to 365 days in the county jail. Therefore, this exception is also inapplicable to the applicant. Accordingly, the applicant is inadmissible to the United States as he has been convicted of a crime involving moral turpitude.

The director also determined that the applicant was ineligible for adjustment to status because he has been convicted on a felony. The regulation at 8 C.F.R. § 245a.18 provides:

(a) *Ineligible aliens.* (1) An alien who has been convicted of a felony or of three or [more] misdemeanors committed in the United States is ineligible for adjustment to LPR status under this Subpart B.

The record reflects that the applicant was convicted of the felony offense of receiving or possessing stolen property. The maximum punishment for this offense is imprisonment in a state prison or in the county jail for not more than one year.

The record contains a copy of a minute order from the Superior Court of Los Angeles indicating that on January 5, 1999, the court granted the applicant's petition to set aside his guilty plea and dismiss the case pursuant to California Penal Code section 1203.4, as he had completed the terms of his probation. However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not reduce a conviction on the *merits* are of no effect in determining the alien's status for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Therefore, the applicant remains convicted for immigration purposes.

On appeal, counsel asserts that the applicant's conviction was subsequently reduced to a misdemeanor. The applicant submits a copy of a minute court order indicating that on January 26, 2007, the court granted the applicant's motion to reduce his offense to that of a misdemeanor in accordance with California Penal Code section 17(b). The record is unclear as to the court's jurisdiction over a case that has been previously dismissed pursuant to section 1203.4 of the California Penal Code. Nonetheless, Section 17(b) provides:

When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison.

As noted, the applicant was sentenced to 365 days in the county jail. The court's determination that the applicant was guilty of a misdemeanor as opposed to a felony was within its authority under section 17(b) of the penal code. Citizenship and Immigration Services is bound by the state's characterization of the applicant's offense as a misdemeanor instead of a felony. *Garcia-Lopez v. Ashcroft*, 334 F.3d 840 (9<sup>th</sup> Cir. 2003).

Accordingly, while the record does not establish that the applicant is inadmissible into the United States pursuant to section 212(a)(2)(B) of the Act because he has been convicted of a felony, he does stand convicted of a crime involving moral turpitude, and is therefore inadmissible into the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

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