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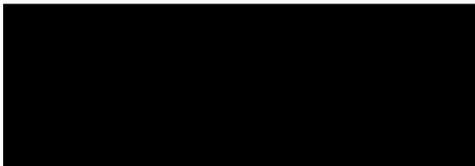
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FILE:



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Office: NEW YORK

Date: APR 01 2008

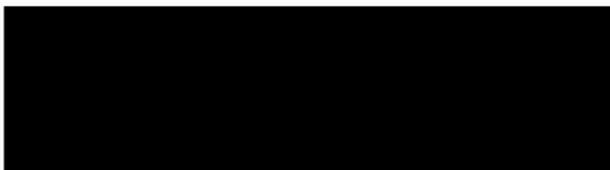
IN RE:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

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 in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director also referred to the applicant's two misdemeanor convictions for crimes involving moral turpitude, which make him ineligible for LIFE legalization. The applicant had not acknowledged either conviction on his application form for LIFE legalization, the director pointed out, which raised doubts about the applicant's veracity.

On appeal counsel asserts that the director applied the wrong evidentiary standard in adjudicating the application.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act.

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 Lawful Permanent Resident status. Section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

In addition, section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), which is generally applicable to all aliens seeking admission to the United States, specifies that an alien is inadmissible if (s)he has been convicted of a "crime involving moral turpitude" (other than a purely political offense), or if (s)he admits having committed such crime, or if (s)he admits committing an act which constitutes the essential elements of such crime.

Under the LIFE Act regulations, a crime involving moral turpitude cannot be waived as a ground of inadmissibility, and therefore bars an alien absolutely from admission to the United States. 8 C.F.R. § 245a.18(a)(2)(i).

The applicant, a native of Pakistan, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 1, 2002. In a Notice of Intent to Deny, issued on May 29, 2007, the director pointed out that the only documentary evidence of the applicant's residence in the United States for the requisite time period of before January 1, 1982 through May 4, 1988, were six affidavits prepared by acquaintances in 1992. The director indicated that this evidence was insufficient to establish the applicant's continuous residence in the United States during that time period. The director also cited the applicant's testimony at his interview for LIFE legalization on July 6, 2006, at which he acknowledged that he had been arrested (in March 2000) and presented a certified court disposition confirming that he had been convicted on October 31, 2000 of two misdemeanor crimes under the New York Penal Code – (1) *Scheme to defraud*, 2<sup>nd</sup> degree and

(2) *Attempt to commit a petit larceny.* It is well recognized that a crime in which fraud is an element is a crime involving moral turpitude. *See Jordan v. DeGeorge*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). Likewise, larceny (both grand and petit) is recognized as a crime involving moral turpitude, as is attempted larceny. *See Brett v. Immigration & Naturalization Service*, 386 F2d. 439, cert denied 382 U.S. 935 (1967). Though the director did not precisely say so in the NOID, the applicant's two convictions make him ineligible for legal permanent resident status under the LIFE Act.

In response to the NOID counsel asserted that the affidavits were good evidence of the applicant's continuous residence in the United States during the years 1981-1988, and that a third criminal arrest mentioned by the director in the NOID, on September 29, 2005, resulted only in a conviction for disorderly conduct.

The director found that the applicant's response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director failed to apply the proper evidentiary standard – preponderance of the evidence – and set too high a requirement for the submission of additional documentation to corroborate the affidavits. The AAO does not agree with counsel's position, and concurs with the director's determination that the affidavit evidence was insufficient to establish the applicant's continuous unlawful residence in the United States from 1981 through May 4, 1988. Even more importantly, however, the record is clear that because of his two convictions for crimes involving moral turpitude the applicant is ineligible under section 212(a)(2)(A)(i)(I) of the INA, and 8 C.F.R. § 245a.18(a)(2)(i), for adjustment to permanent resident status under the LIFE Act. This bar is absolute, as specified in the regulation, and cannot be waived.<sup>1</sup>

The record also includes a certified final court disposition of the applicant's further arrest on September 29, 2005, confirming that he was convicted in the Albany City Court of disorderly conduct, an infraction under New York State law punishable by up to 15 days in jail, on November 10, 2005. Since any crime punishable by more than five days imprisonment is a misdemeanor for purposes of the LIFE Act, as specified in 8 C.F.R. § 245a.1(o), the applicant's conviction for disorderly conduct constitutes a third misdemeanor conviction in the United States, which also makes him ineligible for legalization under section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

An alien applying for adjustment of status under the provisions of section 1104 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from before January 1, 1982 to May 4, 1988, is

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<sup>1</sup> The record includes a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was arrested in New York yet again for petit larceny on October 17, 2002. No final court disposition of this charge has been submitted.

admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. *See* 8 C.F.R. § 245a.11. The applicant has failed to meet this burden. Accordingly, the appeal will be dismissed, and the application denied.

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