



U.S. Citizenship
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[REDACTED]

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FILE: [REDACTED]
MSC 02 039 63857

Office: SAN FRANCISCO

Date: **AUG 12 2008**

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: Self-represented

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.

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 (director) in San Francisco, California. 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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant submits some additional documentation.¹

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. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *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.” (Emphases added.)

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 its amenability to verification. See 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

¹ In a letter to the San Francisco District Office during the appeal, dated August 26, 2005, [REDACTED] stated that his law office had been retained to represent the applicant. Since no Form G-28, Entry of Appearance as Attorney or Representative, was submitted by [REDACTED], he will not be recognized as the attorney of record in this decision. In a change of address card sent to the Citizenship and Immigration Services (CIS) office in London, Kentucky, on August 31, 2006, however, the applicant identified the address of [REDACTED] as his new address. Accordingly, this decision will be mailed in the applicant’s name to that address.

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 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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Mexico who was born on August 9, 1967 and claims to have lived in the United States since October 2, 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 8, 2001. At that time the record included the following documentary evidence of the applicant’s residence and presence in the United States during the years 1981-1988, which had been filed in August 1993 in connection with a form for determination of class membership in the *CSS v. Meese* class action lawsuit² and an associated application for status as a temporary resident (Form I-687):

An affidavit dated August 9, 1993 by [REDACTED] – a resident of [REDACTED] in Baldwin Park, California, and the owner/manager of [REDACTED]’s Jewelry Sales and Repair in City of Industry, California – stating that the applicant approached him on October 2, 1981 seeking work. Mr. [REDACTED] stated that he already had the necessary help, but agreed to give the applicant room and board and some spending money in exchange for his help in jewelry repair, for which he would be trained. According to [REDACTED] the applicant left to see his uncle in Fresno on October 20, 1984, but returned on December 8, 1984 and continued to live with [REDACTED] and his wife, and work in the jewelry store, until 1988. [REDACTED]

² *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

states that the applicant traveled to Mexico on January 10, 1988 to visit his ailing mother, returned to Baldwin Park on February 5, 1988, and finally departed on August 9, 1988 to take another job in the jewelry business.

- An affidavit dated July 28, 1993 by [REDACTED], a resident of Irwindale, California, stating that she and the applicant lived together and to her knowledge the applicant had resided at [REDACTED] in Baldwin Park from October 1981 to October 1984. Ms. [REDACTED] did not indicate where the applicant lived from October 1984 through 1988.

An affidavit dated August 7, 1993 by [REDACTED], a resident of Covina, California, stating that the applicant resided at [REDACTED] in Baldwin Park from December 1984 to August 1988, at which time he moved to Santa Ana, California, and that she had met the applicant at a jewelry “swap meet.”

In support of his application for LIFE legalization in 2001 the applicant submitted some additional documents as evidence of his residence and physical presence in the United States during the 1980s, including:

- A statement by [REDACTED], a resident of Baldwin Park and neighbor of the applicant, dated August 25, 2001, that he has known the applicant since 1980, used to spend time with him, and has maintained a friendship since then.

A statement by [REDACTED], a resident of Baldwin Park and neighbor of the applicant, dated August 25, 2001, that he also had known the applicant since 1980, that the applicant was a close friend of the family, and that they had played soccer together for many years.

- A statement by [REDACTED], a resident of Baldwin Park and neighbor of the applicant, dated August 25, 2001, that she also had known the applicant since about 1980, that he had become a close friend of the family, that he traveled to Mexico in early 1988 to see his ailing mother, and that he had worked at various jobs over the years, mostly in the jewelry field.
- A statement by [REDACTED], a resident of Irwindale, California, dated August 25, 2001, that she is the applicant’s sister, came to the United States the same time as her brother, and that he was denied the legalization and U.S. citizenship she recently obtained because of the short time he left the country to visit their mother in Mexico.

A photocopied letter envelope with a U.S. postmark, dated November 6, 1984, identifying the addressor as the applicant from an address in Fresno, California, and the addressee as an individual in Temixco Morelos, Mexico.

- A photocopied merchandise receipt, dated August 7, 1985, identifying the applicant as the customer.

Following the applicant's interview for LIFE legalization on July 15, 2003, the director issued a Notice of Intent to Deny (NOID) requesting the submission of the final court disposition of the applicant's arrest on August 10, 2002 (for improper conduct with a minor). The applicant was granted 90 days to submit this document and any additional evidence. An extension was subsequently requested by the applicant, but no further documentation was submitted.

On September 7, 2004, the director issued a Decision denying the application. The director found that the evidence of record was insufficient to establish that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required to be eligible for legalization under the LIFE Act. The director made no specific finding with regard to the unresolved status of the applicant's criminal charge dating from his arrest on August 10, 2002.

On appeal the applicant submits supplemental statements from [REDACTED], and [REDACTED], dated September 20, 2004, revising the year they initially met the applicant from 1980 to 1981. The applicant also submits a certified record from the Superior Court of California, in Alameda County, dated May 3, 2006, confirming that the applicant's petition to dismiss the criminal charge stemming from his arrest on August 10, 2002 was granted by the judge on May 1, 2006.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The affidavit from [REDACTED], dated July 28, 1993, states that the applicant lived in his house and worked in his jewelry store virtually uninterruptedly from October 1981 to August 1988. For this entire seven-year time period, however, [REDACTED] has not produced a single piece of evidence to support this claim. No photographs or other documents dating from the 1980s have been submitted to show a living and working relationship between [REDACTED] and the applicant during that time. [REDACTED] has provided no specifics as to why the applicant happened to approach him for work in October 1981, and has not indicated whether the applicant also attended school in subsequent years. No school records have been submitted, nor any immunization or other medical records to demonstrate the applicant's residence and physical presence in California up to 1988. For the reasons discussed above, the AAO concludes that the affidavit from [REDACTED] is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other affidavits and personal statements from friends and relatives of the applicant who claim to have known him during the 1980s, they provide almost no information about his

life in the United States and their interaction with him over the years. The other two affiants from 1993 – [REDACTED] and [REDACTED] – are the only ones who indicate where the applicant was living, much less identify a specific address for him, during the years 1981-1988, and even they only indicate an address for part of that time period. For the amount of time they claim to have known the applicant, the authors provide remarkably few details about him. Furthermore, none of the affidavits and personal statements was accompanied by any evidence from the authors – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits and personal statements in the record have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the letter envelope postmarked November 6, 1984, the director appears to have viewed it as good evidence of the applicant's residence in the United States at that time. The AAO notes, however, that the handwritten addresses of the addressee and addressor do not appear to be in the applicant's own handwriting. Nor has the applicant submitted the letter he supposedly enclosed in the envelope. Even if the AAO accepted the envelope as good evidence of the applicant's residence in the United States as of November 1984, it would not be persuasive evidence of the applicant's residence in the previous years of 1983 or 1982, much less before January 1, 1982.

With respect to the photocopied merchandise receipt, dated August 7, 1985, it appears to identify the applicant as the purchaser of a CD for \$19.95. The name of the business is not identified on the receipt, however, and no address is identified for the applicant. Nor does the receipt bear a date stamp or other authenticating mark from the store. For the reasons discussed above, the merchandise receipt has little probative value. It is not persuasive evidence that the applicant was residing in the United States during 1985.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Therefore, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.³

³ The AAO notes that court documents in the record indicate that on January 30, 1997, the applicant was convicted in Los Angeles Superior Court of a misdemeanor crime – larceny – under section 484(a) of the California Penal Code (PC), and placed on probation for two years. On August 8, 2006, following the applicant's fulfillment of the conditions of probation, the court granted the applicant's motion, pursuant to PC section 1203.4 and 1203.4a, to expunge the conviction and dismiss the criminal charge.

Section 101(a)(48)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(48)(A), defines “conviction” as follows:

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Under the statutory definition of "conviction" at section 101(a)(48)(A) of the INA, 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 by operation of a state rehabilitative statute. See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. See also *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000) (conviction vacated under a state criminal procedural statute, rather than a rehabilitative provision, remains vacated for immigration purposes). In *Matter of Pickering*, a more recent precedent decision, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains “convicted” for immigration purposes. See *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

The record does not indicate that the expungement of the applicant’s misdemeanor conviction was based on the merits of the case. For immigration purposes, therefore, the applicant remains convicted of a misdemeanor. Since an alien convicted of three or more misdemeanors, or one felony, committed in the United States is ineligible for LIFE legalization, any future proceedings before CIS must take the applicant’s misdemeanor conviction into consideration.

Moreover, larceny (even petty larceny) has been held to be a crime involving moral turpitude. See *Briseno-Flores v. Attorney General*, 492 F.3d 226 (3rd Cir. 2007) (alien stole two bottles of rum from grocery store); *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). See also *Matter of V-*, 2 I&N Dec. 340 (BIA 1940); *Matter of V-I-*, 3 I&N Dec. 571 (BIA 1949); *Wilson v. Carr*, 41 F.2d 704 (9th Cir. 1930); and *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979). Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA), 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. See 8 C.F.R. § 245a.18(c)(2)(i).

In an exception to the foregoing statutory provision, however, section 212(a)(2)(A)(ii)(II) of the INA provides that an alien is not inadmissible if (s)he committed only one crime involving moral turpitude whose maximum penalty is one year imprisonment and the alien was not sentenced to a prison term exceeding six months. That situation applies to the applicant in this case.