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U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

MSC 02 218 63383

Office: SAN FRANCISCO

Date:

FEB 27 2008

IN RE:

Applicant:

[Redacted]

APPLICATION:

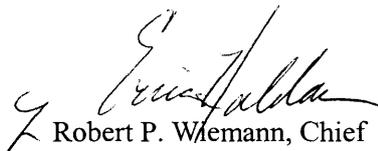
Application for Status as a Permanent Resident pursuant to Section 1104 of the
Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat.
2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat.
2763 (2000).

ON BEHALF OF PETITIONER:

[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.



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, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

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).

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 who has been convicted of a felony or three or more misdemeanors in the United States is inadmissible and, therefore, ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act.

The district director denied the application, finding that the applicant was not an eligible alien, as defined by 8 C.F.R. §254a.10, in that he had been convicted of three or more misdemeanors.

On appeal, counsel for the applicant files Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), and states:

See attached statement. Applicant requests 45 days to submit a brief. Counsel has several briefs due to be filed with the 9th Circuit Court of Appeals, The Board of Immigration Appeals, in addition to several court cases between the immigration court and the civil court. Good cause shown, 45 days extension is requested.

The attached statement merely claims that the service “has not followed its own internal regulations/memorandums” and that the service’s contention that the applicant “has not met the burden is baseless and unfounded.” The director, however, provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the denial. Neither the applicant nor counsel acknowledges the applicant’s misdemeanor convictions or their affect on the applicant’s admissibility to the United States on Form I-290B or the accompanying statement.

On the Notice of Appeal received on September 20, 2005, counsel for the petitioner clearly indicates that he would send a comprehensive brief with the necessary evidence to the AAO within forty-five days. To date there is no indication or evidence that the petitioner ever submitted a brief and/or evidence in support of the appeal with the Service or with the AAO.¹ The appeal, therefore, will be adjudicated based on the evidence currently contained in the record.

¹ On February 14, 2008, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had been received in this matter and requested that counsel submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. As of the date of this decision, no response has been received.

The regulation at 8 C.F.R. § 245a.10(d)(1) provides in pertinent part that an eligible alien may adjust to legal permanent resident status under LIFE legalization if he or she “has not been convicted of any felony or of three or more misdemeanors committed in the United States.” As stated by the director, the record contains evidence that the applicant was convicted of three misdemeanor offenses in the State of California in 1992, 1997 and 2004.

No evidence to refute this finding has been submitted. Furthermore, counsel’s brief statement accompanying Form I-290B, which alleges that the applicant has met his burden of proof, is simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Since the applicant has been convicted of a total of three misdemeanors, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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