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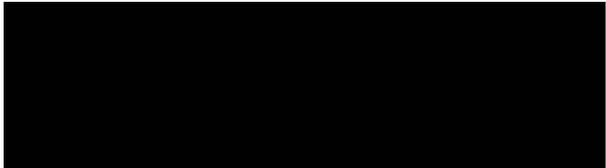
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 02 193 61171

Office: LOS ANGELES

Date: **JUL 10 2000**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 District Director, Los Angeles, California, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish that he had been illegally and physically present in the United States from January 1, 1982, through May 4, 1998. The district director also found that the applicant was inadmissible for convictions of two crimes involving moral turpitude.

On appeal, counsel for the applicant asserts that the director did not adequately consider all of the evidence submitted by the applicant. Counsel also asserts that the applicant's criminal convictions do not preclude him from eligibility. Counsel did not submit additional evidence for consideration.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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 record reflects that on April 11, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 4, 2003, the applicant appeared for an interview based on his application.

On April 19, 2004, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant failed to submit evidence to establish that he had resided in the United States during the requisite periods. The director also stated that the applicant was inadmissible for convictions of two crimes involving moral turpitude. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, counsel for the applicant did not submit additional documents, but did submit a rebuttal statement that listed the evidence submitted to establish the applicant’s continuous physical presence and continuous residence.

On March 10, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the director did not adequately consider all of the evidence submitted by the applicant. Counsel also asserts that the applicant’s criminal convictions do not preclude him from eligibility. Counsel did not submit additional evidence for consideration.

The first issue in this proceeding is whether the applicant is ineligible for benefits under the LIFE Act because of his two criminal convictions. LIFE Act applicants are subject to the separate criminal provisions under the LIFE Act. They are also subject to the grounds of inadmissibility under section 212(a) of the Immigration and Nationality Act (the Act).

Section 212(a)(2)(A)(i)(I) of the Act describes classes of individuals who are not admissible to the United States:

(2) Criminal and related grounds

(A) Conviction of certain crimes

- (i) In general, except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of
  - (I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime) . . . is inadmissible.

On August 4, 2003, the director issued a Request For Evidence (RFE) requesting that the applicant submit final certified court dispositions of his arrests. In response, the applicant submitted a certified court disposition, indicating that on January 15, 1986, in the Municipal Court of the Alhambra Judicial District, in the County of Los Angeles, he was convicted of one count of Burglary, in violation of California Penal Code, § 459. The applicant also submitted a certified court disposition

On April 19, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) the application, stating that the applicant was inadmissible for convictions of two crimes involving moral turpitude. In response, counsel asserted that criminal ineligibility under the LIFE Act arises with the conviction of three misdemeanors and the applicant was only convicted of two misdemeanors.

On March 10, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel asserts that the applicant's criminal convictions do not preclude the applicant from eligibility. Counsel asserts that it was unclear how the director came to the conclusion that the applicant's convictions were both crimes involving moral turpitude. Counsel also asserts that the director did not analyze whether the petty offense exception applied in this case. Finally, counsel asserted that even if the applicant's convictions rendered him inadmissible, the director did not take into account that waivers of inadmissibility may be granted for most grounds of inadmissibility and that the applicant's three U.S. citizen children would suffer extreme hardship if separated from their father.

The term crime involving moral turpitude is not defined in § 212(a)(2)(A)(i), but courts have held that moral turpitude refers generally to conduct which is inherently base, vile, or depraved,

contrary to the accepted rules of morality and the duties owed between man and man, either one's fellow man or society in general. Matter of Franklin, 20 I&N Dec. 867, 868 (BIA 1994).

In determining whether a crime involves moral turpitude we must examine the statute under which the applicant was convicted. Matter of Torres-Varela, 23 I&N Dec. 78, 84 (BIA 2001). Here, the applicant was convicted of burglary, under California Penal Code § 459.

California Penal Code §459 defines burglary as follows:

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, . . . floating home, . . . railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, . . . any house car, . . . inhabited camper, . . . vehicle as defined by the Vehicle Code, when the doors are locked, aircraft . . . , or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary.

The director found the applicant inadmissible as an alien who had been convicted of a crime involving moral turpitude. However, burglary is considered a crime involving moral turpitude only when it is established that the offense was committed with the intent to commit a crime involving moral turpitude. Matter of Frentescu, 18 I&N Dec. 244 (BIA 1982). The court records contained in the record of proceeding do not describe the circumstances of the offense and, therefore, the applicant's intent cannot be determined. Therefore, at this time, the record is not sufficient to establish the applicant's inadmissibility under Section 212(a)(2)(A)(i)(I) of the Act. Accordingly, the director's finding regarding this issue is withdrawn.

The applicant was also convicted of misdemeanor possession of a false driver's license, under California Penal Code § 470B. He was sentenced to 17 days in jail and three years probation. The maximum possible penalty for a conviction under § 470B is imprisonment in the county jail not exceeding six months. Section 470B states that:

Every person who displays or causes or permits to be displayed or has in his possession any driver's license or identification card of the type enumerated in Section 470a *with the intent that such driver's license or identification card be used to facilitate the commission of any forgery*, is punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

(Emphasis added).

The applicant's conviction for misdemeanor possession of a false driver's license constitutes a crime involving moral turpitude. However, the conviction qualifies for the petty offense exception under I.N.A. 212(a)(2)(B)(I), since, in California, the maximum penalty for misdemeanor possession of a false driver's license does not exceed imprisonment for one year and the applicant was not sentenced to a term of imprisonment in excess of six months. The

applicant is not inadmissible under § 212(a) of the Act. Therefore the applicant is not ineligible for adjustment of status under the LIFE due to his conviction for possession of a false driver's license. Accordingly the director's decision to deny the application on this ground is withdrawn.

The second issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982; his continuous residence from January 1, 1982, through May 4, 1988; and, his continuous physical presence in the United States during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

Employment Letters

- A letter dated October 26, 1990, from [redacted] director of [redacted] Cemeteries. Mr. [redacted] states that the applicant worked for the company as a part-time employee from 1981 through 1983. Mr. [redacted] states that the applicant was doing basic cleaning duties and that the applicant stated his address was [redacted] [redacted], Los Angeles, California.
- A letter dated April 18, 1991, from [redacted] Mr. [redacted] states that the applicant worked as a part-time helper at the Bt. Israel Cemetery, from October 1983 to December 1983 for approximately 15 to 20 hours a week. Mr. [redacted] stated that he was the applicant's supervisor at the time.

The employment letters can be given little evidentiary weight as they lack sufficient detail and fail to meet regulatory requirements. Specifically, the employers failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Mr. [redacted] stated that the applicant stated his address, but did not indicate whether this address was obtained from company records or not. Mr. [redacted] did not list the applicant's address at all. Under the same regulations, the employers also failed to declare whether the information was taken from company records, and identify the location of such company records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. Mr. [redacted] did not identify the exact period of the applicant's employment. Neither Mr. [redacted] nor Mr. [redacted] identified any periods of layoff and neither employer listed the applicant's duties with the companies in any detail.

The applicant submitted three additional pieces of correspondence regarding employment at several restaurants. Little weight can be given to these documents as they are incomplete, lack sufficient detail, and fail to meet regulatory requirements. One letter, on Marriott Corporation letterhead, signed by [redacted] states that an employee by the name of [redacted] was employed by Bob's Big Boy as a full-time dishwasher at one location from November 20, 1984, to November 25, 1985, and at another location from July 17, 1986, through August 29, 1986. The record contains no explanation regarding the identity of [redacted]

██████████ and whether this is an assumed name the applicant worked under. ██████████ submitted a letter but it is not written on company letterhead. Mr. ██████████ states that the applicant worked for him as a cook from November 1984 to November 1985 at Bob's Big Boy in Sun City. Another letter, on Shari's Franchise Corp. letterhead stationary, signed by ██████████ states that an employee list is enclosed and that she contacted the restaurant and that two employees, ██████████, assistant manager, and ██████████ head cook, can verify that an individual by the name of ██████████ worked there in 1986 and 1987. No employee list was enclosed. Ms. ██████████ does not specify which restaurant she is referring to. None of the letters list the applicant's duties in any detail and none provide the applicant's address at the time of employment. Finally, the employers failed to declare whether the information was taken from company records, and identify the location of such company records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable.

#### Letters and Affidavits

- Two letters from ██████████ the applicant's uncle. In the letter dated April 18, 1991, Mr. ██████████ states that the applicant came to the United States in 1981 and lived at his house until 1984. He states that the applicant worked as a helper doing maintenance and cleaning at cemeteries. He states that after 1984, the applicant moved out but that they continued to see each other on a daily basis. The second letter, dated March 10, 2006, is almost identical to the first, except that in it, Mr. ██████████ adds that he and the applicant go to church every Sunday together. Mr. ██████████ fails to indicate any personal knowledge of the applicant's claimed entry to the United States. He fails to provide any meaningful details about the applicant's continuous residence or physical presence in the United States, especially during the three years they lived together. In addition, Mr. ██████████ did not provide any evidence that he resided in the United States during the requisite period. He states that the applicant moved out in 1984, but does not indicate where the applicant moved to;
- An affidavit dated March 3, 2006, from ██████████. Mr. ██████████ states that he met the applicant since he worked as a cook at Bob's Big Boy Restaurant from 1985 to 1986. He states that they have been good friends ever since. Mr. ██████████ states that he knows that the applicant has been physically residing here in the United States for many years. He lists the applicant's current address. Mr. ██████████ does not claim personal knowledge of the applicant's continuous residence or physical presence before 1985. He fails to state how or where he and the applicant met. He states that the applicant worked at Bob's Big Boy but does not state whether he himself worked there. The affiant provides no details regarding any relationship with the applicant during the requisite period. The affiant fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than his current

address. In addition, there is no evidence that the affiant resided in the United States during the requisite period;

- A letter dated March 4, 2006, from [REDACTED] z. Mr. [REDACTED] states that he met the applicant in May 1981 but does not indicate how or under what circumstances he met the applicant, or claim to have personal knowledge of the applicant's claimed date of entry to the United States. He states that he has kept in contact with the applicant and his family since they first met, that the applicant always helps him and his relatives when they do home improvements, that they see each other at reunions and weekend dinner get togethers, and that they talk to each other at least every two weeks or not less than once a month, but fails to provide any personal knowledge of the circumstances of the applicant's continuous residence and physical presence. Finally, he fails to submit evidence that he resided in the United States during the requisite period;
- Two form affidavits or declarations dated March 22 and March 23, 1990. The forms, signed by [REDACTED] and [REDACTED] list the applicant's address in California from May 1981 through 1990, and are consistent with information on the applicant's Form I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the address listed. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): \_\_\_\_." Mr. [REDACTED] added "I've known [REDACTED] since we were in Mexico. I have had a close relationship since I saw him in Los Angeles. Now he works in Moreno Valley and we see each other frequently"; Ms. [REDACTED] added "He is my brother-in-law['s] brother. Every weeken[d] we visit each other. Since June 1988, he is living at my home." These affidavits, prepared on a fill-in-the-blank form, contain no details regarding any relationship with the applicant during the requisite period and fail to state when or where the affiants and the applicant met. Mr. [REDACTED] and Ms. [REDACTED] fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiants resided in the United States during the requisite period; and,
- A letter dated March 4, 2006, from [REDACTED] z. Mr. [REDACTED] states that he met the applicant in February 1982, but provides no details of the circumstances under which they met and does not specify how he is able to recall the date when they met. He states that he and the applicant see each other once or twice a month and that the applicant was the godfather at his daughter's 15<sup>th</sup> birthday ceremony. He provides no other details about the applicant's continuous residence and

physical presence during the required period and claims no personal knowledge of the applicant's claimed date of entry into the United States.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains various other documents, including the birth certificate of the applicant's child, born in California on December 12, 1995; Wells Fargo Bank statements from 1992 and 1993; a 1991 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement; a rental agreement dated January 1, 1994; a 1994 California Department of Motor Vehicle record; and two employment letters from [REDACTED] of the human resources department of Denny's Restaurant. One letter, that is not dated, stated that the company payroll records indicate that the applicant was an employee of Denny's Restaurants from January 9, 1990, to July 31, 1990, and that his job title was cook. The other letter, dated January 7, 1991, stated that the applicant worked as a cook for Denny's Restaurants from June 28, 1988, to June 28, 1988, and from January 9, 1990, to July 31, 1990. No explanation was provided about the inconsistencies in these letters. Also, neither letter listed the address where the applicant lived during those time periods. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States in October 1987, near San Isidro, California, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

The applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.