

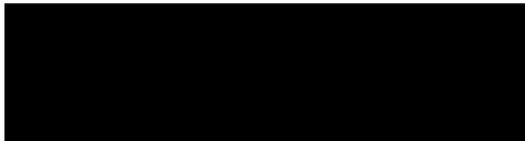


U.S. Citizenship
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Office: PHILADELPHIA

Date: JUN 20 2008

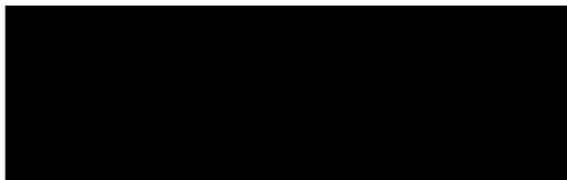
and

– consolidated herein]

MSC 02 247 66603

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.

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 Philadelphia, Pennsylvania. 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 there was sufficient evidence in the record to find that the applicant was involved in the illicit trafficking of a controlled substance, making him statutorily ineligible for legalization under the LIFE Act.

On appeal counsel asserts that the director did not have a sufficient “reason to believe” that the applicant was an illicit trafficker of drugs, based on the evidence referenced in the decision.

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, and 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.

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. See 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)(C)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(2)(C)(i), which is generally applicable to all aliens seeking admission to the United States, specifies that an alien is inadmissible if a consular officer or an immigration officer “knows or has reason to believe” that the alien:

[i]s or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so

The applicant, a native of Pakistan who has lived in the United States since the 1970s, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 4, 2002.

In a Notice of Intent to Deny, issued on October 25, 2004, the director stated that “[t]here is reason to believe that you were an illicit trafficker of a controlled substance.” Drawing from documentation in the record, the director referred to the applicant’s arrest in January 1986 on a heroin possession charge, which was later dropped; evidence that the applicant had accepted money from an undercover police informant in April 1988 for a prior drug sale; evidence that the applicant sold hashish to the same undercover police informant in May 1988; evidence that the applicant was in contact with persons known to the U.S. government as drug smugglers; the applicant’s arrest in August 1988 for trafficking in hashish; and the subsequent *nolle prosequi* of

his case (in February 1992) because of the applicant's work with U.S. authorities as a confidential informant in other drug trafficking investigations. Based on the foregoing evidence, the director concluded that the applicant was inadmissible to the United States under section 212(a)(2)(C)(i) of the INA, and therefore ineligible for LIFE legalization. The applicant was granted 30 days to refute or rebut the director's determination.

In response to the NOID counsel asserted that the director erred in basing his determination on the "reason to believe" language in section 212(a)(2)(C)(i) of the INA because that basis "was found to be unsustainable under the same set of facts and law" in earlier proceedings involving the applicant.

Counsel cited the decision on May 31, 1989 by a U.S. consular officer in Toronto, Canada, denying the applicant an immigrant visa on the ground that there was reason to believe he had been an illicit trafficker of drugs. At an exclusion hearing on January 26, 1993, an Immigration Judge (IJ) in Atlanta, Georgia, in agreement with the consular officer, ruled the applicant inadmissible to the United States as a suspected drug trafficker. On September 23, 1993, after a change of venue, an IJ in Hartford, Connecticut, denied the applicant's asylum application, his application for withholding of deportation, and his application for a waiver under section 212(c) of the INA as a matter of law. The applicant appealed. On April 18, 2001 the Board of Immigration Appeals (BIA) issued an amended order sustaining the appeal in part, and dismissing it in part. The BIA agreed with the applicant that the IJ in Atlanta, Georgia, erred in ruling that the applicant was excludable from the United States as a drug trafficker because the only evidence presented at the exclusion hearing was the testimony of a criminal investigator of the U.S. Customs Service who had witnessed the undercover operation, whereas "no testimony was presented regarding whether the examining immigration officer or consular officer knew at the time parole was revoked [March 12, 1991]." The BIA concluded that the IJ did not have "reason to believe" that the applicant had been trafficking in a controlled substance, and improperly ruled that he was excludable on that ground. This portion of the appeal was therefore sustained. The BIA dismissed the rest of the appeal, however, agreeing with the IJ in Hartford, Connecticut, that the applicant had not established his eligibility for asylum, or withholding of deportation, or a waiver of inadmissibility.

According to counsel, the BIA's decision in 2001 "remains the law of the case" regarding the applicant's admissibility to the United States. The issue of the applicant's admissibility under section 212(a)(2)(C)(i) of the INA had already been litigated, counsel contended, and the government had offered no new evidence beyond the facts previously reviewed by the BIA. Since those facts were deemed insufficient to form a well-grounded "reason to believe" that the applicant was a drug trafficker, counsel maintained that the applicant was not inadmissible to the United States on that ground.

On November 26, 2004, the director issued a Notice of Decision denying the application for legalization under the LIFE Act. The director cited language from the BIA decision – in which it agreed with the IJ that the testimony of the U.S. Customs Service investigator "could give someone a 'reason to believe' that the applicant has been trafficking in a controlled substance" –

as an acknowledgement by the BIA that there was presently (in 2001) sufficient evidence to sustain a charge of inadmissibility under section 212(a)(2)(C)(i) of the INA. With regard to the current application for LIFE legalization, the director explained as follows:

What a previous immigration officer or consular officer knew regarding your criminal history during a prior hearing is now irrelevant because your current application comes before the Service *de novo*. Unlike your case that went before the Board, the record is clear that the facts indicating your involvement in the drug trade are before the Service prior to the issuance of the final decision in your case.

The director concluded that “there is sufficient evidence to find that you were involved in the illicit trafficking of a controlled substance,” which made the applicant inadmissible to the United States under section 212(a)(2)(C)(i) of the INA.

On appeal, counsel asserts that the director did not have a sufficient “reason to believe” that the applicant was an illicit trafficker of drugs, based on the evidence referenced in the NOID which consisted of little more than a police report stating that the applicant sold hashish to an undercover informant on two occasions in 1988, without any corroborating statement from the informant. At his interview for LIFE legalization in Philadelphia, counsel reiterates, the applicant denied that he was ever involved in drug trafficking. Counsel cites *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9th Cir. 2000) for the principle that a determination by the government that there is “reason to believe” an alien was involved in drug trafficking must be based on “reasonable, substantial, and probative evidence.” In the applicant’s case, counsel contends, the BIA ruled in 2001 that such evidence was lacking.

The AAO does not agree with counsel’s position. The AAO concurs with the director that the current record governs the adjudication of the current application under the LIFE Act, and notes that there is abundant evidence in the record – as reflected in the director’s recitation of the drug-related incidents and legal proceedings involving the applicant between 1986 and 1992 – that the applicant was involved with drug trafficking. The most probative evidence in the record includes police reports detailing the investigation of the applicant by federal authorities on suspicion of drug smuggling in 1987-88 and his arrest in August 1988 for possession and distribution of hashish, as well as internal correspondence and reports of the legacy Immigration and Naturalization Service (INS) and the Drug Enforcement Administration (DEA) detailing their dealings with the applicant, after his arrest in August 1988, as an undercover informant in other drug investigations.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2^d Cir. 1989).

Based on the entire record, including the evidence cited by the director in the NOID and discussed by the AAO above, the AAO determines that there was “reason to believe” the applicant had been an illicit trafficker in a controlled substance, or was “a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking” in a controlled substance, within the meaning of section 212(a)(2)(C)(i) of the INA, at the time the director denied the application for LIFE legalization on November 26, 2004. Accordingly, the applicant is inadmissible to the United States, and ineligible for legalization under the LIFE Act.

Under the LIFE Act regulations, trafficking in a controlled substance 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(a)(2)(iv). The director’s decision will therefore be affirmed.

Beyond the decision of the director, the AAO notes that section 212(a)(2)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(2)(A)(i)(I) – which like section 212(a)(2)(C)(i) is generally applicable to all aliens seeking admission to the United States – specifies that an alien is inadmissible if he or she has been convicted of a “crime involving moral turpitude” (other than a purely political offense), or admits having committed such a crime, or admits committing an act which constitutes the essential elements of such a crime.

Under the LIFE Act regulations, a crime involving moral turpitude (CIMT), like drug trafficking, 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(a)(2)(i).

The evidence of record shows that the applicant was convicted in the State of Georgia on February 29, 1980, of making a false statement on an application for registration to the INS, in violation of section 266(c) of the INA, 8 U.S.C. § 1306(c), and received a sentence of five years probation. A conviction under this section is classified as a misdemeanor and is punishable by a fine of up to \$1,000 and imprisonment for up to six months. Making a false statement to a federal agency is not necessarily a CIMT. *See Neely v. U.S.*, 300 U.S. 300 F.2d 67 (9th Cir.), *cert. denied*, 369 U.S. 864 (1962) (construing 18 U.S.C. § 1001); *Hirsch v. INS*, 308 F.2d 562 (9th Cir. 1962). Nevertheless, on June 1, 1989, the applicant filed an application for waiver of excludability with the INS, which was approved on the same day by the District Director in Atlanta, Georgia.

The evidence of record also shows that the applicant was convicted in the State of Connecticut in March 1999 on a misdemeanor charge of soliciting a prostitute, and was fined \$100. Soliciting prostitution, like all crimes involving prostitution, is a CIMT. *See In the Matter of W--*, 4 I&N Dec. 401, 402 (C.O. 1951) (citing *Matter of P--*, A-6365969 (BIA 1947)). On August 18, 2004, the applicant submitted a Form I-601, Application for Waiver of Ground of Excludability, to U.S. Citizenship and Immigration Services (CIS), which has not yet ruled on the application. The regulation at 8 C.F.R. § 245a.18(a)(2)(i), however, specifies that a crime involving moral turpitude cannot be waived as a ground of inadmissibility. Thus, the applicant’s conviction for soliciting a prostitute would appear to make him inadmissible to the United States on another

ground under section 212(a)(2)(A)(i)(I) of the INA. For this reason as well, the applicant is ineligible for adjustment to permanent resident status under the LIFE Act.

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 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.