



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: **MAY 16 2008**

MSC 02 240 66435

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:

[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. If your appeal was sustained, or if the matter 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles. The case was appealed to the Administrative Appeals Office (AAO) and the AAO issued a decision dismissing the appeal. The AAO now reopens the appeal, sua sponte, to correct a typographical error. The appeal will be dismissed.

The district director denied the application because the applicant was found inadmissible under the section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (ACT), and 8 C.F.R. § 245a.11(d).

On appeal, counsel contends that the applicant has suffered only two misdemeanor convictions. Counsel asserts that the applicant's 1993 conviction was an infraction. Counsel contends that the applicant, therefore, remains eligible for benefits under the LIFE Act.

Section 1104(c)(2)(D) of the LIFE Act states that an alien must establish that the alien is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the ACT.

An eligible alien, as defined in §245a.10, may adjust status to LPR status under LIFE Legalization if:

- (a) He or she properly files, with fee, Form I-485, Application to Register Permanent Residence or adjust Status, with the Service during the application period beginning June 1, 2001, and ending June 4, 2003;
- (b) He or she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988;
- (c) He or she was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988;
- (d) He or she is not inadmissible to the United States for permanent residence under any provisions of §212(a) of the Immigration and Nationality Act (INA), except as provided in §245a.18, and that he or she:
 - (1) Has not been convicted of any felony or of three or more misdemeanors committed in the United States;
 - (2) Has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and
 - (3) Is registered or registering under the Military Selective Service Act, if the alien is required to be so registered; and
 - (4) He or she can demonstrate basic citizenship skills.

At issue in this proceeding is whether the applicant has been convicted of three misdemeanors in the United States and, therefore, inadmissible to the United States.

In the Notice of Intent to Deny (NOID), dated June 17, 2005, the director determined that the applicant had been convicted of three misdemeanors. The director stated that the applicant had the following convictions:

1. *theft of property*, a violation of section 484(a) of the California Penal Code resulting from an arrest on March 22, 1993 (Case # [REDACTED])
2. *driving with a .08 or higher blood alcohol*, a violation of section 23152(b) of the California Vehicle Code resulting from an arrest on January 13, 1995 (Case # [REDACTED]); and
3. section 273.5(a), *inflicting corporal injury on spouse/cohabitant*, a violation of the California Penal Code resulting from an arrest on or about April 27, 1996 (Case # [REDACTED])

The director determined that the applicant was not eligible to adjust status to LPR under LIFE Legalization. The director provided the applicant with 30 days to rebut any adverse information. The record reflects that no rebuttal was received. In the Notice of Decision, dated September 29, 2005, the director denied the instant application based on the reasons stated in the NOID.

On appeal, counsel contends that the director erroneously classified the applicant's 1993 conviction as a misdemeanor when, in fact, it was for an infraction. Counsel attached a certified docket sheet from the applicant's 1993 conviction pursuant to California Penal Code §484(a). Counsel asserts that the docket sheet indicates that the conviction was an infraction.

The record contains a certified copy of the applicant's docket sheet in the Municipal Court of Torrance Courthouse Judicial District in the County of Los Angeles, State of California, dated October 3, 2005. The docket sheet indicates that the applicant committed *theft of property* in violation of section 484(a) of the California Penal Code on March 22, 1993. On May 18, 1993, the complaint was amended to allege the crime as an infraction pursuant to 17b4 of the California Penal Code. The applicant was convicted of the infraction and sentenced to a fine. Based on the above evidence, the AAO finds that the applicant's 1993 conviction was an infraction.

Beyond the decision of the director, an alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

An alien's conviction for crime of domestic violence against a cohabitant is a crime of moral turpitude. *Morelli v. Ashcroft*, 100 Fed. Appx. 620, 621 (9th Cir. 2004). Here, the applicant was convicted of violating section 273.5(a), *inflicting corporal injury on spouse/cohabitant*, of the California Penal Code resulting from his arrest on or about April 27, 1996 (Case # 65G02118). Thus, the applicant's 1996 conviction was a crime of moral turpitude and renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(ii)(II) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude if:

The *maximum* penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year *and*, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

(Emphasis added).

The record does not contain any court documents or information regarding the applicant's sentence for this crime. However, the maximum penalty possible for the applicant's conviction under section 273.5(a) exceeds imprisonment for one year. The applicant does not qualify for the above exception. Therefore, the applicant remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his *inflicting corporal injury on spouse/cohabitant* conviction. No waiver of such ineligibility is available.

Based on the above discussion, the AAO will overturn the director's decision that the applicant was convicted of three misdemeanors. However, the AAO finds the applicant inadmissible due to his 1996 conviction, which was a crime involving moral turpitude. Given this, 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.