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U.S. Citizenship  
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FILE:

MSC-02-274-61193

Office: National Benefits Center

Date: **NOV 24 2008**

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. The file has 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.

A handwritten signature in black ink, appearing to read "J. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit requested court documents relating to his arrest on March 21, 1982, in Los Angeles, for assault with a deadly weapon, and resisting arrest. The director observed that the applicant was notified of the deficiency in his application for permanent residence on October 24, 2006, when he was mailed a Form I-72 (Request for Evidence). The Form I-72 requested the applicant to provide a final original court certified disposition for his arrest on the above charges. Thereafter, the applicant was mailed a Notice of Intent to Deny (NOID) on January 26, 2007, and informed that he failed to provide sufficient credible evidence of residence for the requisite period of time. Because of the applicant's failure to submit the requested court documents and appropriate evidence of residence, the director denied the application.

The applicant is represented by counsel on appeal. Counsel argues that the applicant never received the NOID and thus was unable to provide a rebuttal. Counsel noted that she submitted a change of address form for her law office in July, 2006 and the record supports this statement. The AAO concludes that the Form I-72 and the NOID were mailed to the wrong address of record for the applicant's counsel. However, the record before the AAO also reveals that the *applicant's* address has not changed during the period of time in question, and the notices of the deficiencies in the application were mailed to applicant's most current address. Hence, the applicant's failure to respond to either the Form I-72 or the NOID is not excused. The regulation at 8 C.F.R. § 103.2(b)(13) states in relevant part:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

Counsel also states that any official record of the applicant's criminal charges and ultimate disposition has been destroyed. In support of this statement, counsel offers two certified letters from the City of Inglewood Police Department and the Inglewood Superior Court stating that there is no record of a court case under the applicant's name, and that all police records are destroyed after ten years.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

*See also* 8 C.F.R. § 245a.11(b).

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).

Additionally, an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1).

At issue in this proceeding is whether the applicant has established that he resided in the United States throughout the statutory period and whether he submitted the appropriate court documents to meet his burden of establishing that he is admissible to the United States, that he has not been convicted of three misdemeanors or a felony and that he is eligible to adjust to lawful permanent resident status. Here, the applicant has failed to meet this burden.

The AAO notes that despite two separate notifications of deficiencies in his application for permanent residence, the applicant failed to provide final dispositions for his arrest for assault with a deadly weapon and resisting arrest. Inasmuch as assault with a deadly weapon is construed as an aggravated felony pursuant to section 245 of the California Penal Code, if the defendant is sentenced to a year or more in prison, the AAO cannot determine whether the applicant is inadmissible. Thus, the applicant has not met his burden of proof and his application must be denied on that ground. *See* section 245A(b)(1)(C) of the Act; 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5).

The record before the AAO also reflects that on September 6, 1985, the applicant appeared before an Immigration Judge and was ordered deported for entering the United States without inspection on August 14, 1985. A Warrant of Deportation indicates that the applicant voluntarily returned to Mexico on September 6, 1985. Furthermore, the applicant submitted an affidavit admitting that he voluntarily returned to Mexico following two immigration arrests.

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An alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside of the United States under an order of deportation. Section § 245A(g)(2)(B)(i) of the Act, 8 U.S.C. 1255(g)(2)(b)(i). A challenge to the Service's implementing regulations was dismissed in *Proyecto San Pablo v. INS, et al.*, (Civ. No. 89-456-TUC-RCC), June 18, 1997. As indicated above, the applicant was outside of the United States under an order of deportation.

Thus, the applicant is not eligible to adjust to lawful permanent resident status under the LIFE Act. See 8 C.F.R. § 245a.18(a)(1). The appeal is dismissed on this basis as well.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

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