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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JAN 18 2007

MSC 01 296 60201

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, of 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director also found the applicant inadmissible to the United States because of a conviction under California law of petty theft, a crime involving moral turpitude.

On appeal, the applicant contends she has submitted "all the possible evidence [she] was able to obtain in order to establish eligibility" under the LIFE Act. The applicant also contends that her conviction for petty theft was set aside following her completion of probation and does not constitute a ground of inadmissibility as a consequence.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 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).

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 petitioner 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 petitioner 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 or petition.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The submitted evidence of residency is sufficiently relevant, probative, and credible. The director did not list any specific deficiencies in the evidence submitted by the applicant. The record shows that the applicant has submitted letters from her employers, affidavits from landlords, rent receipts and other documents as evidence of residency. These documents are amenable to verification and are consistent with other information in the record. Viewed in its totality, the evidence in the record presents a consistent account of the applicant's residency in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the director's determination that the applicant failed to establish that she entered the United States before January 1, 1982 and resided in continuous unlawful status since that date through May 4, 1988 is withdrawn.

Although the applicant has met her burden of proof regarding her residency in the United States, she is ineligible to adjust to Legal Permanent Resident status under section 1104 of the LIFE Act because she is inadmissible to the United States under section 212(a)(2)(A)(i)(I) (commission or conviction of crime involving moral turpitude) of the Immigration and Naturalization Act (Act). 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 is not inadmissible to the United States under any provisions of section 212(a) of the Act. 8 C.F.R. § 245a.11(d). Section 212(a)(2)(A)(i) of the Act provides that any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude is inadmissible.

The record shows that the applicant was convicted of misdemeanor petty theft of retail merchandise under California Penal Code § 484 on November 26, 1991 and sentenced to 12 months and one day of probation, and convicted again of the same crime on October 14, 1995 and sentenced to two years and one day of probation. The director correctly found that these crimes constitute crimes involving moral turpitude and render the applicant inadmissible to the United States. The crime of petty theft under California law is a crime involving moral turpitude. *See United States v. Esparza-Ponce*, 193 F.3d 1133, 1136-37 (9th Cir. 1999). The fact that the applicant's second conviction was set aside following the completion of the applicant's sentence does not alter this finding. In general, convictions for crimes involving moral turpitude continue to constitute convictions for purposes of federal immigration law even if the convictions have been expunged under California law for equitable, rehabilitation, or immigration hardship reasons. *See Nath v. Gonzalez*, 467 F.3d 1185, 1188-89 (9th Cir. 2006); *Palacios v. Gonzalez*, 133 Fed. Appx. 391, 392-93 (9th Cir. 2005). Regardless, there is no evidence in the record indicating that the applicant's first conviction for petty theft was expunged or otherwise altered.

As the applicant is inadmissible to the United States under INA § 212(a)(2)(A)(i), she has not established eligibility to adjust status to Legal Permanent Resident under section 1104 of the LIFE Act.

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