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U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 01 325 60209

Office: LOS ANGELES

Date:

JAN 06 2009

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.

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.

In his decision the director denied the application because it was determined that the applicant had been convicted of a three misdemeanors and was not eligible for legalization.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.11(d)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

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 Immigration and Nationality Act (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).

Legacy INS received the results of the alien's FBI fingerprint check, which reveal the following criminal history record under the name [REDACTED]:

1. On November 22, 1987, the applicant was arrested or received by the Los Angeles Police Department, under a charge of assault with a firearm. The FBI fingerprint check shows that the applicant was convicted of Exhibiting a Firearm in violation of PC 417(A)(2); however, despite the director's request the applicant has failed to provide the actual court disposition for this offense.
2. On February 26, 1992, the applicant was arrested by the Los Angeles Police Department for a Felony Grand Theft Auto, in violation of PC 487(H). Despite the director's request the applicant has failed to provide the actual court disposition for this offense.

The record also contains court transcripts for the following charges:

3. On March 8, 1989, the applicant was charged with operating a vehicle with greater than .08% blood alcohol content, in violation of VC 23152(B), a misdemeanor, in the Municipal Court of Los Angeles. Case No. [REDACTED]. The court record, submitted by the applicant, shows the applicant was subsequently convicted of Exhibition of Speed/Engaging and Aiding in violation of VC 23109(C), a misdemeanor, on February 28, 1992.
4. On December 19, 1994, the applicant was arrested and charged with operating a motor vehicle with greater than .08% blood alcohol content, in violation of VC 23152(B), a misdemeanor, in the Municipal Court of Los Angeles. Case No. [REDACTED]. The court record, submitted by the applicant, shows that he was subsequently convicted of this charge.
5. On August 10, 1996, the applicant was arrested and charged with operating a motor vehicle with greater than .08% blood alcohol content, in violation of VC 23152(B), a misdemeanor, in the Municipal Court of Los Angeles. The court record, submitted by the applicant, shows that he was subsequently convicted of this charge on August 29, 1996. Case No. [REDACTED].
6. In addition, the record contains a records search from The Superior Court, Los Angeles County, stating that the records for a previous case, [REDACTED], have been destroyed. No further information about this case is known.

On January 28, 2003, the director sent the applicant a Request For Evidence (RFE) in which he requesting copies of court dispositions for arrests listed on his criminal record.

In response the applicant provided court dispositions for the charges listed at Nos. 3, 4, and 5 above.

On July 24, 2006, the director informed the applicant he was not eligible for LIFE Act legalization, and gave him 30 days to respond. In response the applicant provided court dispositions for Nos. 4 and 5 above.

On September 1, 2006, the director denied the application because the applicant was not eligible due to three misdemeanor convictions.

On appeal, counsel for the applicant claims that “no case exists for my client” that submitting a more recent record check for the 1992 record which stated “no entry was found for the above-named client.”

In response to the request for evidence, the applicant failed to submit the requested court dispositions. Instead, the applicant submitted some name check results from a search done under a name different than the alias or name used when arrested. The applicant has not provided all of the evidence requested by the director. For this reason alone, the application cannot be approved. 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. 8 C.F.R. § 103.2(b)(13). An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. 8 C.F.R. § 103.2(b)(12). Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying

information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5). In this case the applicant failed to reveal his full criminal history when applying for LIFE Act legalization.

Counsel asserts that the applicant has only been convicted of two misdemeanors. However, a subsequent review of the record and the court dispositions provided by the applicant reveals that he has been convicted of at least three misdemeanors, at Nos. 3, 4, and 5 above, and possibly more. 8 C.F.R. § 245a.11(d)(1).

The most recent record check submitted by the applicant is misleading, as an original check stated that a prior case from 1987 had been destroyed, revealing that there are probably more criminal convictions on the applicant's record than has been revealed. Further, the name used in the search is [REDACTED], and not [REDACTED] listed by the FBI.

The applicant failed to submit evidence to establish that the FBI report regarding the applicant's convictions was in error.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment. In this case the applicant has been convicted of three or more misdemeanors, is ineligible pursuant to 8 C.F.R. §245a.11(d)(1), and has therefore failed to meet his burden. The appeal will be dismissed.

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