U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: JUL 2 4 2009

MSC 02 295 61787

IN RE: Applicant: [redacted]
aka

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. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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, New York, New York. The decision 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 sufficient evidence to establish that he had resided continuously in the United States throughout the statutory period as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserted that the record did include sufficient evidence to establish that he had resided continuously in the United States in an unlawful status throughout the entire statutory period. He also submitted various original documents which place the applicant in the United States after the statutory period.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

During the adjudication of the appeal, derogatory information came to light that seriously undermined the credibility of the evidence that the applicant submitted in support of the application. On April 2, 2009, the AAO issued the applicant a notice of derogatory information that informed him that based on this derogatory information, the AAO intended to dismiss his appeal. The AAO notified him of the derogatory information pursuant to U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.2(b)(16)(i) and provided him with an opportunity to respond. The applicant requested additional time to respond on April 20, 2009. The AAO granted an extension through June 22, 2009 and informed the applicant that no further extensions would be allowed. On July 1, 2009, the applicant submitted a letter through counsel in which he requested additional time to respond because he was waiting on information from the U.S. Library of Congress regarding the issue date of stamps which he had submitted into the record and because he has been extremely ill. The applicant did not provide any documentation to support his assertions that he had made inquiries at the Library of Congress or that he was experiencing health problems. The AAO will consider the record complete and go forward with an analysis of this matter.

Section 212(a)(6)(C) of the Act provides in pertinent part:

> Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa,

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

An applicant for permanent resident status under the LIFE Act 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

The applicant made a claim to class membership in a legalization class-action lawsuit and filed a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on or about June 12, 1989.

He submitted into the record what he stated were eight original pay stubs from Finnest Protective Corporation, 115 Main Street, WhitePlain, New York 10606 and which he indicated had been issued to him during the statutory period. In the Notice of Decision, the director stated that the New York State Department of State, Division of Corporations, Corporation and Business Entity Database, accessible through the web page at http://www.dos.state.ny.us/ (accessed July 16, 2009) indicates that in New York there was no company operating under the name Finnest Protective Corporation or a similar name until the company: Finest Protective Service, Inc. began operating on January 8, 2007. *See* the New York Department of State record of the corporate filing for Finest Protective Service, Inc. at http://appsext8.dos.state.ny.us/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=3459640&p_corpid=3458806&p_entity_name=%66%69%6E%65%73%74%20%70%72%6F%74%65%63%74%69%76%65&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0 (accessed July 16, 2009.) Further, as noted above, on the original pay stubs submitted, "Finest" is misspelled as "Finnest" and "White Plains NY" as "WhitePlain NY". The AAO stated in the notice of derogatory information that these discrepancies call the authenticity of the pay stubs even further into doubt. Moreover, on the Form I-687, which the applicant signed under penalty of perjury on April 18, 1989, he stated that from December 1980 through September 1984 he resided at [redacted] Yet, on the pay stubs submitted, which are dated February 13, 1981, August 18, 1981, September 18, 1981, January 19, 1982, March 5, 1982, April 1, 1983, January 4, 1984 and March 2, 1984, the applicant's address is listed as 1[redacted]

Thus, the AAO stated in the notice of derogatory information that the record indicates that the applicant submitted falsified documents created to support his claim that he resided in the United States throughout the statutory period.

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[2] It is noted that on the February 13, 1981 pay stub, the date of the pay stub appears as February 13. Apparently the year has been worn off the stub where the date appears. Nonetheless, listed on the same stub is the "pay period ending date" of February 8, 1981. Thus, the date of this pay stub is listed above as February 13, 1981 for purposes of this analysis. This office also notes that according to the information that the applicant listed on the Form I-687, he began residing at the address which appears on these eight pay stubs later in the statutory period.

The AAO also stated that the applicant submitted into the record two original Air Letters/ Aerogrammes one of which is postmarked February 10, 1981 and one which is postmarked October 25, 1982. According to the address on the February 1981 Air Letter, this letter was sent to the applicant at [redacted]. According to the address on the October 1982 Air Letter, this letter was sent to the applicant at an address that differs from that listed on the February 1981 Air Letter and from the address which the applicant lists for himself on the Form I-687 in that it is missing an apartment number and the zip code is one digit off. Specifically, this Air Letter indicates that it was sent to [redacted] Both Air Letters display the same Nigerian postage stamp.

The AAO stated in the notice of derogatory information that a review the *2009 Scott Standard Postage Stamp Catalogue* Volume 4 (Scott Publishing Company 2008) reveals the following:

- The stamp on both of these Air Letters has a value of 40 kobo. The stamp commemorates the Nkpokiti dancers, and contains an illustration of a band of Nkpokiti dancers. This stamp is listed at page 1490 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 496 (Nigeria). The catalogue lists this stamp's official date of issue as June 16, 1986. The catalogue also notes that certain denominations in the stamp series that includes the 40 kobo Nkpokiti dancers stamp and thirteen other stamps were in use as early as 1984.

The notice of derogatory information pointed out that the fact that the Air Letters which the applicant claimed were mailed from Nigeria to him in the United States in 1981 and in 1982 each bear stamps that were not in use until 1984, at the earliest, establishes that the applicant utilized these documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence in the United States for the requisite period. By engaging in such action, the AAO stated that the applicant had seriously undermined the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

The AAO concluded that the applicant had used falsified evidence including: two Air Letters and eight Finnest Protective Corporation pay stubs to make material misrepresentations in an attempt to establish his residence in the United States during the requisite period. Thus, he had seriously undermined the credibility of his claim of continuous residence in the United States throughout the statutory period. In the notice of derogatory information, the AAO explained that because the record indicates that the applicant has submitted falsified documents, the AAO would not give weight to the unsupported statements that he had provided in these proceedings.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition or application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO explained to the applicant in the notice of derogatory information that unless he is able to provide independent and objective evidence to overcome these findings, the AAO would find that he had failed to establish continuous residence in the United States throughout the statutory period and the AAO would dismiss his appeal.

Also, the record indicates that the applicant willfully misrepresented material facts relating to having resided continuously in the United States during the requisite period when he presented fabricated evidence in support of his LIFE legalization application, and that he did this in an effort to procure the status of lawful permanent resident in the United States. As such, the AAO stated that unless the applicant is able to provide independent evidence to overcome these findings, this office will find that he is inadmissible under section 212(a)(6)(C) of the Act.

The AAO also explained in the notice of derogatory information that even if the applicant were to withdraw the appeal, the AAO would still make a finding that he had sought to procure immigration benefits through fraud and willful misrepresentation of material facts.

The AAO stated too that pursuant to 8 C.F.R. § 103.2(b)(5), this office may in its discretion request original documentation. Because the information described in the notice of derogatory information concerns falsified documents, the AAO explained that it would accept only original documents, not any photocopied documentation, as evidence to overcome the findings in that notice. The AAO reiterated that pursuant to *Matter of Ho*, *supra*, the applicant cannot overcome the findings listed in the notice of derogatory information simply by offering a self-written explanation.

The applicant has failed to provide any independent, objective evidence to overcome the findings listed in the notice of derogatory information. In response to the notice of derogatory information, he simply made assertions of his own and through counsel that the various pieces of evidence which he submitted such as Air Letters and pay stubs are authentic. Therefore, the appeal will be dismissed.

In addition, the record indicates that the applicant was convicted of two misdemeanors during 1994.

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).

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime. . . is inadmissible.

(ii) Exception.

Clause (i)(I) shall not apply to an alien who committed only one crime if-

. . . .

(II) 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 6 months (regardless of the extent to which the sentence was ultimately executed).

In *Matter of Garcia-Hernandez,* 23 I&N Dec. 590 (BIA 2003), the Board held that a respondent who was convicted of more than one crime, only one of which was a crime involving moral turpitude, was eligible for the petty offense exception provided for under section 212(a)(2)(A)(ii) of the Act. The Board reasoned that:

> The "only one crime" proviso [within the exception carved out at section 212(a)(2)(A)(ii) of the Act], taken in context, is subject to two principal interpretations: (1) that it is triggered . . . by the commission of any other crime, including a mere infraction; or (2) that it is triggered only by the commission of another crime involving moral turpitude . . . . [W]e construe the "only one crime" proviso as referring to . . . only one crime involving moral turpitude.

Matter of Garcia-Hernandez at 594.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The BIA and U.S. courts have found that it is the "inherent nature of the crime as defined by statute and interpreted by the courts and as limited and described by the record of conviction" and not the facts and circumstances of the particular person's case that determines whether the offense involves moral turpitude. *See, e.g., Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5th Cir. 2002); *Goldeshtein v. INS*, 8 F.3d 645 (9th Cir. 1993). Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Before one can be convicted of a crime of moral turpitude, the statute in question by its terms, must necessarily involve moral turpitude. *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979); *Matter of L-V-C*, 22 I&N Dec. 594, 603 (BIA 1999) (finding no moral turpitude where the "statutory provision ... encompasses at least some violations that do not involve moral turpitude").

Where a statute is divisible (broad or multi-sectional), *see, e.g., Matter of P-*, 6 I&N Dec. 193 (BIA 1954); *Neely v. U.S.*, 300 F.2d 67 (9th Cir. 1962), the court looks to the "record of conviction" to determine if the crime involves moral turpitude. *Matter of Ajami*, 22 I&N Dec. 949, 950 (BIA 1999) (look to indictment, plea, verdict, and sentence; *Zaffarano v. Corsi*, 63 F.2d 67 757 (2d Cir. 1933); *US. v. Kiang*, 175 F.Supp.2d 942, 950 E.D. Mich. 2001). A narrow, specific set of documents comprises the record: "[the] charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented." *Shepard v. U.S.*, 125 S.Ct. 1254, 1257 (2005). The record of conviction does not include the arrest report. *See In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996).

On September 16, 1993, the Valley Stream Nassau County Police Department arrested the applicant and charged him with forgery in the second degree, a class D felony, under New York Penal Law (NYPL) § 170.10, and with criminal possession of stolen property, a class E felony, under NYPL § 165.45. On March 11, 1994, in the First District Court of Nassau County, in case having [redacted], the applicant pled guilty to and was convicted of forgery in the third degree, a class A misdemeanor, under NYPL § 170.05, and disorderly conduct, a violation, under NYPL § 240.20. The judge sentenced the applicant to 85 days at the Nassau County Correctional Center (NCCC).

The applicant provided the alias [redacted] at the time of this arrest and conviction. He also provided March 31, 1959 as his date of birth and the U.S. Virgin Islands as his place of birth in these criminal proceedings.

Section 170.05 of the NYPL states:

> A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written statement.
>
> Forgery in the third degree is a class A misdemeanor

As a specific intent to defraud, deceive or injure is an element of the crime, this office finds that forgery in the third degree is a crime involving moral turpitude under the Act.

Section 70.15 of the NYPL provides that the "sentence of imprisonment for a class A misdemeanor ... shall not exceed one year."

The applicant has also been convicted of a violation under NYPC § 240.20. A misdemeanor includes any offense which is punishable by imprisonment of a term of one year or less, except that it shall not include offenses for which the maximum sentence is five days or less. *See* 8 C.F.R. § 245a.1(*o*). A conviction of a violation under NYPC § 240.20 is an offense that may lead to a term of imprisonment of up to 15 days. *See* NYPC § 70.15(4)(noting that, unless the sentence is specified in the law which defines the offense, the term of imprisonment for a violation shall not exceed 15 days). The AAO finds that this conviction for disorderly conduct constitutes a misdemeanor under the Act, and that it is not a crime involving moral turpitude.

The record shows that the applicant was sentenced to a term of imprisonment of 85 days for his violations under NYPL §§ 170.05 and 240.20.

The applicant's Section 170.05 conviction falls within the petty offense exception set forth in the Act.

The record establishes that the applicant was convicted of only one crime involving moral turpitude and that the crime qualifies under the petty offense exception to inadmissibility. Thus, the applicant is not inadmissible under section 212(a)(2)(A) of the Act. The applicant's convictions as documented within the record do not otherwise impact his eligibility for the benefit sought in this matter.

The record also includes evidence that on February 22, 2002, at the Criminal Court of the City of New York, in the case having the [redacted] the applicant pled guilty to the *civil* offense of Littering under New York Administrative Law § 16-118 (6), and he paid a fine of $50 dollars plus a $45 surcharge. This civil offense does not impact the applicant's eligibility in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

The appeal is also dismissed because the applicant is inadmissible to the United States under section 212(A)(6)(C)(i) of the Act.

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.