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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC-03-249-64093

Office: LOS ANGELES

Date:

MAR 25 2009

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 on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. 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.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because of his failure to disclose a criminal conviction and because he failed to establish by a preponderance of credible, probative evidence that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status through May 4, 1988.

The applicant is represented by counsel on appeal. Counsel asserts that the applicant disclosed his arrest and conviction for entering a secure airport area with false documents during the LIFE application process, and that he remains eligible for adjustment to permanent resident status. No additional evidence is submitted on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

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

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 applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Furthermore, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(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).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for permanent resident status. But, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception. See 8 U.S.C. § 1182(a)(2)(A)(ii). A CIMT will meet the petty offense exception if "the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months." *Lafarga v. INS*, 170 F.3d 1213, 1214-15 (9th Cir. 1999) (quoting 8 U.S.C. § 1182(a)(2)(A)(ii)(II)); see also *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843-46 (9th Cir. 2003). For the purpose of the petty offense exception, "the maximum penalty possible" . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed." *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 835 (9th Cir. 2008) (offense of bribery of a public official did not qualify for petty offense exception where statutory maximum for offense was 15 years).¹

The AAO has reviewed all of the documents in the file individually and in their entirety. The AAO has also examined the federal statute under which the applicant was convicted and the court documents explaining the applicant's arrest and conviction. In this case, the record reveals that on August 7, 2002, the applicant was charged with a series of violations of federal law while employed at Los Angeles International Airport (LAX) during "[REDACTED]" (USA v. [REDACTED], United States District Court for the Central District of California, Western Division). Specifically, the applicant was charged with one count of violating 18 U.S.C. § 1036(a)(3) – *Entry by False Pretenses to any Secure Area of Airport*, one count of violating 42 U.S.C. § 408(a)(7)(B) – *Misuse of SSN for Any Purpose*, and two counts of violating 18 U.S.C. § 1546(a) – *Fraud and Misuse of Documents for Authorized Stay or Employment in the United States*.

Pursuant to the terms of a plea agreement, the applicant pleaded guilty to one count of violating 18 U.S.C. § 1036(a)(3) – *Entry by False Pretenses to any Secure Area of Airport*. The

¹ An applicant for admissibility who stands convicted of a CIMT may also be eligible for the youthful offender exception if: the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States. 8 U.S.C. § 1182(a)(2)(A)(ii)(I).

remaining counts were dismissed. On October 11, 2002, the court sentenced the applicant to one year of incarceration. The applicant's prison sentence was suspended to time served, and he was alternatively sentenced to one year of supervised release.

The issue in this case is whether the applicant's federal criminal conviction for entering a secure airport area by means of false pretenses disqualifies him for adjustment to permanent resident status under the terms of the LIFE Act.² Title 18 U.S.C. § 1036 falls under Part I, Chapter 47 involving fraud and false statements. Section 1036 is specifically titled: Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport. A conviction for this offense carries a maximum penalty of a ten year prison sentence. A violation of 18 U.S.C. § 1036 is categorically a crime of fraud and thus, a CIMT, for which no waiver of inadmissibility exists in this case. *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. November 7, 2008).

The AAO concludes that the applicant remains ineligible to adjust status to one of permanent residence because of his conviction for a CIMT. The applicant's conviction does not meet the "petty offense" exception or the "youthful offender" exception because the statutory maximum sentence to which the applicant is exposed exceeds one year incarceration and the offense was not committed when the applicant was under 18 years of age.

The AAO concludes that the applicant is ineligible for permanent resident status pursuant to the terms of the LIFE Act, as he cannot establish that he is otherwise admissible to the United States on account of his conviction for a crime involving moral turpitude. There are no waivers available for this ground of inadmissibility. Section 245A(d)(2)(B)(ii), 8 U.S.C. § 1255a(d)(2)(B)(ii).

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

² The decision of the director erroneously identifies one of the dismissed counts in the federal indictment as having resulted in a second conviction. The court documents clearly indicate that the applicant has only one federal conviction noted above. The AAO withdraws from that segment of the decision that lists a second federal conviction. The decision to deny the application (Form I-485) also relies upon inconsistencies in the evidence regarding the applicant's date of first entry into the United States and continued residence during the requisite period. The AAO has reviewed the evidence of entry and residence in this case, and we agree generally with the analysis of the director. Additionally, the AAO will examine the immigration consequences of the applicant's criminal conviction.