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

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FILE: [redacted] Office: LOS ANGELES Date: MAY 2 1 2009

MSC 02 234 60770

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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 remanded for further action, 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 in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director determined that the applicant was ineligible for legalization under the LIFE Act because she had been convicted of a felony committed in the State of California.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

While the record contains good evidence that the applicant meets the continuous residence and physical presence requirements, she would still be ineligible for LIFE legalization if she has been convicted of a felony or of three or more misdemeanors committed in the United States. *See* section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1). [1]

Furthermore, section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA), which is generally applicable to all aliens seeking admission to the United States, specifies that an alien is inadmissible if (s)he has been convicted of a "crime involving moral turpitude" (other than a purely political offense), or if (s)he admits having committed such crime, or if (s)he admits committing an act which constitutes the essential elements of such crime.

In an exception to the above provision, section 212(a)(2)(A)(ii)(II) of the INA provides that an alien is not inadmissible if (s)he committed only one crime involving moral turpitude whose maximum penalty is one year imprisonment and the alien was not sentenced to a prison term exceeding six months.

In addition to the foregoing provisions, section 212(a)(4)(A) of the INA specifies that:

> Any alien who, . . . in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible [to the United States].

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[1] As defined in 8 C.F.R. § 245a.1(o): "*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) . . . ."

As defined in 8 C.F.R. § 245a.1(p): "*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 CFR part 245a, the crime shall be treated as a misdemeanor."

The applicant, a native of Mexico, filed an Application to Register Permanent Residence or Adjust Status, (Form I-485) on May 22, 2002. In a decision dated August 9, 2006, the director denied the application on the ground that the applicant was convicted of felony burglary in California on June 9, 1997, making her ineligible for LIFE legalization.

Counsel filed a timely appeal in which he addressed the issue of the applicant's criminal conviction in California. Counsel submitted a persuasive argument, based on applicable federal and state law and the record of court proceedings, that the applicant's conviction was only a misdemeanor under California law and the provisions of the LIFE Act, and that it was not a disqualifying crime involving moral turpitude. Thus, the applicant is not ineligible for LIFE legalization based on her criminal record.

On January 6, 2009, the Acting Chief, AAO, sent a request for evidence (RFE) to the applicant, with a copy to counsel, referring to documentary evidence in the file that the applicant had received monetary assistance from the government. In particular, the record includes photocopies of the following documentation:

A request for documents sent to the applicant by the County of Los Angeles, Department of Public Social Services, dated October 15, 1985, in connection with her application for benefits under Aid to Families with Dependent Children (AFDC), due to a newborn child.

- A form letter from the County of Los Angeles, Department of Public Social Services, dated December 12, 1989, stating that the applicant was receiving $940/month under Aid to Families with Dependent Children (AFDC) for her five minor children, that she was also receiving Food Stamp assistance of $197/month, and that her case had been opened on May 4, 1983.

The AAO advised the applicant of the requirement under section 212(a) of the INA that an alien deemed likely to become a public charge was inadmissible to the United States, and thus ineligible for LIFE legalization. The AAO recited the regulation at 8 C.F.R. § 245a.2(d)(4), which lists the types of documents an alien could file to prove his or her financial responsibility. In accordance with the regulation the AAO specifically requested the applicant to submit any or all of the following: (1) evidence of her current employment including hours/week and rate of pay; (2) evidence that she is able to support herself without public assistance; (3) a notarized Form I-134, Affidavit of Support, with supporting documentation; and (4) any other relevant documentation. The applicant was granted 30 days to submit the requested evidence. [2]

The AAO has received no response to the RFE, either from the applicant or from counsel.

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[2] On January 29, 2009 the copy of the RFE sent to counsel was returned to the AAO stamped undeliverable as addressed. After determining that the copy had been sent to counsel's old address, the AAO resent the RFE to counsel by telefax at his current address on February 6, 2009.

The applicant bears the burden of proof in this proceeding. As specified in the regulation at 8 C.F.R. § 245a.12(e):

> An alien applying for adjustment of status under this part [LIFE legalization] has the burden of proving by a preponderance of the evidence that he or she . . . is admissible to the United States under the provisions of section 212(a) of the [INA].

Since the applicant has not submitted any of the documentation requested in the RFE to prove her financial responsibility and demonstrate that she is unlikely to become a public charge, the AAO concludes that she has not established her admissibility to the United States. Therefore, the applicant has failed to establish her eligibility for legalization under the LIFE Act.

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