U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

L2

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 07 2010

MSC 01 320 60195

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.

Perry Rhew
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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded the applicant had abandoned his application for permanent residence by failing to respond to a request to submit a Form I-690, Application for Waiver of Grounds of Excludability (now referred to as Inadmissibility), medical documentation, and court documents relating to his criminal history within the requisite time. Therefore, the director denied the application for a lack of prosecution.

On appeal, counsel indicated that the applicant had made at least ten trips to the Los Angeles, California office of United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service, or the Service) in attempt to provide all of the requested documents. Counsel submits documentation in support of the appeal.

The record reflects that the applicant submitted a Form I-485, LIFE Act application to USCIS on August 16, 2001. The applicant included a Form I-693, Report of Medical Examination, dated July 26, 2001, on which the examining civil surgeon certified a seropositive test for Human Immunodeficiency Virus (HIV) antibodies.

However, as of January 4, 2010, HIV is no longer defined as a communicable disease of public health significance. Until July 30, 2008, section 212(a)(1)(A)(i) of the Immigration and Nationality Act (Act) had specifically required the Secretary of Health and Human Services (HHS) to classify HIV infection as a communicable disease of public health significance. Public Law 110-293 (July 30, 2008) removed this requirement. On November 2, 2009, HHS published a final rule that removes HIV infection from the definition of a communicable disease of public health significance effective as of January 4, 2010. *See* 74 FR 56547 (November 2, 2009). Therefore, as of January 4, 2010, an alien infected with HIV is no longer inadmissible to the United States under section 212(a)(1)(A)(i) of the Act. Consequently, the applicant is no longer required to submit a Form I-690 waiver application and supporting medical documents because of his medical condition.

The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application on March 27, 2002. The notes of the interviewing officer indicate that the applicant acknowledged that he had been arrested for driving under the influence in 1978. The record contains a copy of the results of the applicant's Federal Bureau of Investigation fingerprint check that reflects based upon fingerprint comparison the following information relating to the applicant's criminal history:

- An arrest on May 21, 1978 by the Santa Barbara, California Sheriff's Office with agency case number [redacted] for a single count of misdemeanor Drunk Driving on a Highway.

In addition, a review of the record revealed that record did not contain evidence reflecting the applicant's recent employment history and means of support.

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).

Declarations by an alien that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to verification by the Service or its successor USCIS. The alien must agree to fully cooperate in the verification process. Failure to assist the Service or its successor USCIS in verifying information necessary for proper adjudication may result in denial of the application. 8 C.F.R. § 245a.18(e).

An applicant for permanent resident status must establish that he or she is not ineligible for admission under one or more of the categories listed in section 212(a) of the Act. 8 U.S.C. § 1182(a). The regulation at 8 C.F.R. § 245a.18(c)(2) lists those grounds of inadmissibility contained at section 212(a) of the Act that may not be waived including section 212(a)(4) of the Act (public charge), except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act). If a LIFE Act applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section. *See* 8 C.F.R. § 245a.18(c)(2)(vi).

The regulations at 8 C.F.R. § 245a.18(d)(1), 8 C.F.R. § 245a.18(d)(2), and 8 C.F.R. § 245a.18(d)(3) provide the factors to be considered in determining whether an applicant is likely to become a public charge and whether the special rule applies.

> (1) In determining whether an alien is "likely to become a public charge", financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.
>
> (2) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the

> Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.
>
> (3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-134 shall not constitute an adverse factor.

The record reflects that the AAO issued a request for evidence on January 6, 2010 to the applicant and counsel informing the parties that the applicant needed to submit evidence to establish the disposition of criminal charges relating to his arrest on May 21, 1978, as well as evidence demonstrating that he was not likely to become a public charge. While the notice that was sent to counsel was returned by the United States Post Office as undeliverable, service must be considered complete as the record shows that the applicant received the notice and subsequently submitted a response.

In response, the applicant submits a letter and printout from the State of California Department of Justice, Bureau of Criminal Identification in Sacramento, California. This printout reflects that as a result of his arrest on May 21, 1978 by the Santa Barbara, California Sheriff's Office for a single count of misdemeanor Drunk Driving on a Highway, the applicant was subsequently convicted of a misdemeanor violation of section 23103, Reckless Driving, of the California Vehicle Code in the Santa Barbara Municipal Court on May 23, 1978 and sentenced to five days in jail. Consequently, the applicant provided requested documentation relating to his criminal history establishing that he is not inadmissible on this basis.

The applicant provides a letter containing the letterhead of the Our Lady Queen of Angels Church in Los Angles, California that is signed by social services director [redacted] stated that the applicant had worked for the social services ministry of the parish for the past eight years as a driver. The applicant also includes two separate Form I-134, Affidavits of Support executed by the applicant's sister, [redacted], and brother-in-law, [redacted] However, the letter and the two affidavits of support by themselves cannot be considered as sufficient evidence demonstrating that the applicant is not likely to become a public charge in light of the totality of the circumstances.[1] As a result of the applicant's failure to establish

[1] In his letter, [redacted] fails to state or include evidence demonstrating that the applicant has been and is currently being compensated, financially or otherwise, in exchange for his work with the social ministry of Our Lady Queen of Angels Church. Furthermore, both the applicant's sister and brother-in-law fail to include any

that he is unlikely to become a public charge, he has failed to establish whether he is inadmissible to the United States under section 212(a)(4) of the Act.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status as required by 8 C.F.R. § 245a.12(e). Due to his failure to establish that he is admissible to the United States, the applicant has not met this burden. Consequently, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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

---

evidence to corroborate the financial resources claimed in each of their respective Form I-134 affidavits of support. Without such information and documentation, it cannot be concluded that the applicant is unlikely to become a public charge.