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U.S. Citizenship
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Services



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FILE:



Office: BALTIMORE

Date: JAN 31 2005

BAL-04-122-50023

IN RE:

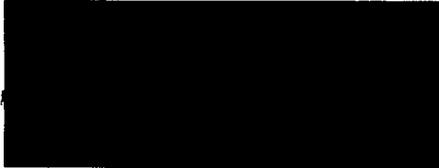
Applicant:



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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director also concluded that the applicant had been convicted of a felony and was inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act). Accordingly, the director denied the application.

On appeal, counsel requests an extension of 60 days in order to submit brief and/or evidence to the AAO. To date, however, no brief and/or evidence has been presented by either counsel or the applicant. Counsel asserts:

8 C.F.R. section 245a.18(c)(2) only provides that the provision of 212(a) may not be waived by the Attorney General under paragraph (c) of the section and as such the Attorney General is still with discretion to waive the ground of inadmissibility under any other provision of the in [sic] a such as section 212(b) of the Act.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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).

In an effort to establish continuous residence from before January 1, 1982 through May 4, 1988, the applicant submitted the following:

- An affidavit from [REDACTED] who claimed to have known the applicant since February 1988.
- Affidavits from [REDACTED] who claimed to have known the applicant since January 1981.
- An affidavit from [REDACTED] who claimed to have known the applicant since February 1982.
- An affidavit from [REDACTED] who claimed to have known the applicant since June 1984.
- A letter dated July 31, 1989 from a representative of Celestial Church of Christ in Hyattsville, Maryland which indicated that the applicant has been a member since February 1980.
- An employment letter from [REDACTED] district manager of Mitchell's in New York, New York who indicated that the applicant was employed from February 13, 1981 through March 31, 1983.
- Several illegible postmarked envelopes including an April 21, 1981 postmarked envelope that appears to have been altered.

The letter from Celestial Church of Christ has no evidentiary weight and probative value as it contradicts the applicant's claim to have first entered the United States on June 12, 1980. Although counsel has claimed that the letter from the church regarding the date the applicant became a member was in error, no documentation has been presented by the church to support counsel's claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(i). The letter is lacking the applicant's address at the time of employment, duties with the company and whether or not the employment information was taken from official company records.

The affidavits from the acquaintances are not persuasive evidence of the applicant's United States continuous residence. While the acquaintances assert that the applicant was residing in the United States they provided no address for the applicant.

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 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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Given the absence of any contemporaneous documentation, and the reliance on affidavits and letters, which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence in the United States for the required period.

The regulation at 8 C.F.R. § 245a.18(a) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to LPR status.

"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.

In addition, an alien is inadmissible if he has been convicted of a crime involving moral turpitude (CMT) (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 Act.

The record reflects that on January 31, 1992, the applicant was arrested by the Police Department in Hyattsville, Maryland for theft and credit card fraud. On August 20, 1992, the applicant was convicted of credit card fraud, a felony, and was sentenced to serve three years in prison. The execution of the sentence was suspended and the applicant was placed on probation for one year. Case no. [REDACTED]

Credit card fraud is a crime involving moral turpitude. *Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966). Therefore, the applicant's conviction for this offense renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Counsel cites section 212(h) of the Act and states that the Attorney General, now the Secretary, Department of Homeland Security may, in his discretion, waive the provision of section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(ii)(II) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude if:

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 six months (regardless of the extent to which the sentence was ultimately executed). (Emphasis added).

The applicant does not qualify under this exception as the maximum penalty possible for the crime exceeded one year.

The applicant is ineligible for the benefit being sought due to his felony conviction. 8 C.F.R. § 245a.11(1) and 8 C.F.R. § 245a.18(a). The applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his CIMT conviction. Further, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence in the United States for the required period. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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