

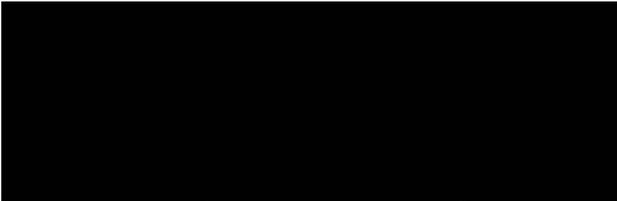
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**U.S. Citizenship
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FILE: [Redacted] Office: LOS ANGELES Date: **JUL 12 2006**
MSC 02 151 61639

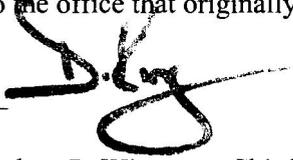
IN RE: Applicant: [Redacted]

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. 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, Chief
Administrative Appeals Office

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

The district director determined that the applicant had been convicted of a felony and therefore, pursuant to 8 C.F.R. § 245a.18(a), was inadmissible to the United States. Accordingly, the director denied the application for adjustment of status as a permanent resident.

The applicant's criminal record history reveals that she was convicted of a violation of the California Penal Code, section 10980(C)(2), welfare fraud, and a felony under California law. The applicant was placed on probation for five years and ordered to pay restitution. On April 26, 2000, upon her completion of probation, the applicant's conviction was set aside, and the charge was reduced to a misdemeanor pursuant to section 17(b) of the penal code, which provides:

When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

- (1) After a judgment imposing a punishment other than imprisonment in the state prison.

- (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

It is clear, therefore, that the applicant's conviction for welfare fraud is a misdemeanor under California law. The director stated that a felony conviction that is later downgraded to a misdemeanor is still a felony conviction. The director does not cite any controlling law for this unqualified proposition and it cannot stand. See *MacFarlane v. Department of Alcoholic Beverage Control*, 326 P.2d 165, 167 (1958), 330 P.2d 769, 772 (1958); *Matter of Song*, 23 I & N Dec. 173 (BIA 2001).

As the applicant has not been convicted of a felony, she is not inadmissible under 8 C.F.R. § 245a.18(a). Nonetheless, the applicant has been convicted of a crime involving moral turpitude and therefore subject to the provisions of section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act).

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such crime. Section 212(a)(2)(A)(i)(I) of the Act. Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the Act (crimes involving moral turpitude) may *not* be waived.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. DeGeorge*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

Welfare fraud is a crime involving moral turpitude. *See Miller v. INS*, 762 F.2d 21 (3d Cir. 1985). *See also Rodriguez v. Ashcroft*, 2004 WL 515617 (9th Cir. March 3, 2004); *Amoya v. INS*, 36 F.3d 992 (10th Cir. 1994).

However, the evidence must be examined to determine if the applicant may be admissible under one of the following exceptions contained at section 212(a)(2)(A)(ii) of the INA:

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

(I) 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, or

(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 this case, the applicant was born on August 23, 1968 and convicted of a crime involving moral turpitude at the age of 30 on January 3, 1996. Therefore, the exception contained at section 212(a)(2)(A)(ii)(I) of the Act does not apply to the applicant as she was over 18 years of age at the time of her conviction. Additionally, the exception contained at section 212(a)(2)(A)(ii)(II) of the Act does not apply to the applicant as the maximum penalty for the offense for which she was convicted is in excess of one year. Therefore, as the applicant has been convicted of a crime involving moral turpitude, she is inadmissible into the United States.

Accordingly, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed.