



U.S. Citizenship
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FILE:

MSC 01 310 61025

Office: LOS ANGELES

Date: JUL 06 2007

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, 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 denied the application because the applicant: 1) was found inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act); and 2) failed to provide an adequate explanation for providing false statements on his application.

On appeal, counsel asserts that the applicant hired a notary who prepared and completed all of his documentation. Counsel asserts the fact that the notary checked the "no" boxes as to applicant's criminal history should not be a ground to deny the applicant's LIFE application.¹ Counsel asserts the applicant never attempted to hide his criminal history as he admitted, at the time of his interview, to having been deported and arrested.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status under the LIFE Act. Section 1104(c)(2)(D)(ii) of the LIFE Act, 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

"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 actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

On July 25, 2003, the director issued a Form I-72, requesting that the applicant provide the court dispositions for his 1974 arrests including any other arrests. On August 11, 2004, the director issued another Form I-72 requesting the applicant provide the final court dispositions for all arrests.

In response, the applicant submitted the court disposition for his arrest on December 18, 1974, along with letters dated July 7 and 25, 2003, from the Los Angeles County Superior Court indicating that the cases for the applicant's arrests in 1974 and "1978-1979" were destroyed pursuant to Government Code 71008.

¹ At the time the Form I-485 was filed, the applicant was given alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file ([REDACTED]), all the documentation from the Form I-485 application was consolidated into the prior A-file.

The July 25, 2003 letter indicates a name search was conducted under the name [REDACTED]
The applicant's name is [REDACTED]

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. The applicant has the burden to establish with *affirmative evidence* that the offenses were either dismissed or were in error.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

According to an FBI report based upon the applicant's fingerprints, the applicant was charged with *attempted entry as a smuggled alien*, and *attempted entry by false claim as a United States citizen* on or about June 7, 1970. There is no final disposition in the record.

According to the same FBI report, the Los Angeles Police Department arrested the applicant under the name [REDACTED] on December 18, 1974 and charged him with *sex perversion crime against child*, a violation of section 288a of the California Penal Code (PC).

According to court documents in the record of proceeding, the applicant pled guilty to and was convicted of one count of *unlawful sex with a minor*, in violation of section 261.5 of the California Penal Code (PC) on February 5, 1975. On February 26, 1975, the Los Angeles County Superior Court sentenced the applicant to serve 14 days in jail and gave him three years probation. (Docket No. [REDACTED])

A California Department of Justice printout dated July 16, 2004, reveals that on August 25, 1974, the applicant was arrested by the South Gate Police Department for violating section 23102(a) of the California Vehicle Code (VC), *drunk driving on the highway*² and 8 U.S.C. § 1325, *illegal entry*. The final dispositions are unknown.

On September 20, 1976, the applicant was charged in the United States District Court for the Central District of California with violating 8 U.S.C. § 1326, *re-entering the United States after deportation*, a felony. On November 29, 1976, the applicant was convicted of this offense and was sentenced to serve 60 days in jail. Case no. [REDACTED]

The record also reflects that the applicant was ordered deported from the United States on March 13, 1975 and December 30, 1976. The applicant is, therefore, inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), which relates to aliens who were previously removed and reentered the United States without authorization.

In response to the Notice of Intent to Deny dated October 6, 2004, the applicant submitted a Form I-690, Application for Waiver for Grounds of Excludability. The record, however, does not indicate that a final decision has been rendered in this matter.

The director denied the application on several grounds. He determined that the applicant admitted he had been arrested for *sexual perversion against a child*, therefore, he "participated in elements of a crime

² On May 21, 1978, the applicant was arrested under warrant [REDACTED] by the Los Angeles Police Department for violating section 23102(a) VC, *drunk driving on the highway*.

involving moral turpitude.” The issue of whether the applicant admitted or was convicted of a crime involving moral turpitude is not necessary here, because the applicant’s felony conviction is a sufficient basis for denying the application.

The director noted that the applicant had indicated on his I-485 application, signed under penalty of perjury, that he had no prior arrests or deportations. On appeal, counsel asserted that the applicant relied upon a notary to prepare his I-485 application and had no intention of misleading CIS. Nevertheless, the applicant is ineligible for the benefit being sought due to his felony conviction. 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). There is no waiver available to an alien convicted of a felony committed in the United States.

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.