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U.S. Citizenship  
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Services

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[REDACTED]

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FILE: [REDACTED]  
MSC 03 107 60258

Office: LOS ANGELES

Date: **APR 02 2008**

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a circular stamp.

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

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988. The director also determined that the applicant was ineligible for permanent residence status due to four misdemeanor convictions.

On appeal, counsel asserts that the applicant must find and submit more evidence that will meet the requisite criteria. Counsel also asserts that the applicant's four misdemeanor convictions were actually a single scheme of conduct, and not four separate convictions.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate

for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In the Notice of Intent to Deny (NOID), dated February 23, 2005, the director stated that the applicant failed to establish that he entered the United States since before January 1, 1982, and resided in a continuous unlawful status since that date through May 4, 1988. The director also stated that the applicant's criminal history made him ineligible for the benefit of temporary resident in the United States. The director noted four convictions on February 22, 1994, in violation of sections 459, 470.B, 484.(G)(a), and 664/487 of the California Penal Code. The director granted the applicant thirty (30) days to submit a rebuttal.

In the Notice of Decision (NOD), dated June 2, 2005, the director stated that the applicant failed to submit a rebuttal to the proposed grounds for denial as of the requested extension time of April 25, 2005. Accordingly, the director denied the instant application for the reasons contained in the NOID. On appeal, counsel addresses both the issues of continuous unlawful residence and ineligibility in his brief.

### Continuous Unlawful Residence

The first issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Upon review of the applicant's file, the record contains the following relevant evidence:

1. A June 24, 2004, notarized declaration by [REDACTED] who stated that the he has known applicant from 1984 to the present. Mr. [REDACTED] provided a telephone number. Although not required, the letter did not include any supporting documentation of [REDACTED]'s presence in the United States during the requisite period. [REDACTED] failed to indicate how he dated his acquaintance with the

applicant, how he met the applicant or how frequently he saw the applicant. The letter provides minimal probative value.

2. A June 28, 2004, notarized declaration by [REDACTED] who stated that he has known applicant since the early 1980s in San Jose, California. [REDACTED] stated, "As a long time friend of his older brother [REDACTED] I actually met him at his brother's apartment back in San Jose, California on one of my numerous visits." The letter is printed on letterhead from the Nigerian Chamber of Commerce with the organization's address and telephone number. Although not required, the letter did not include any supporting documentation of [REDACTED]'s presence in the United States during the requisite period. [REDACTED] failed to indicate a specific date of when he met the applicant or how frequently he saw the applicant. The letter provides minimal probative value.
3. A June 28, 2004, notarized declaration from [REDACTED] who stated that he has known applicant since 1981 in San Jose, California. Mr. [REDACTED] stated that he worked with the applicant at Kentucky Fried Chicken restaurant on King Road in San Jose, California. [REDACTED] provided his business address and telephone number. Although not required, the letter did not include any supporting documentation of Mr. [REDACTED] presence in the United States during the requisite period. He did not indicate the time period that they worked at Kentucky Fried Chicken. It is also noted that on the applicant's Form I-687, Application for Status as a Temporary Resident, the applicant did not indicate he worked at Kentucky Fried Chicken. This discrepancy casts doubt on the credibility of [REDACTED]
4. A March 14, 2005, notarized declaration by [REDACTED], the applicant's brother, who stated that applicant came to the United States in June 1981 and lived with him and his then-fiancée in San Jose, California. Mr. [REDACTED] further stated that applicant worked "menial jobs" and left for Nigeria in August 1987, due to their mother's death, and returned in September 1987. He provided his address and telephone number. Although not required, the letter did not include any supporting documentation of [REDACTED]'s presence in the United States during the requisite period. This letter provides minimal probative value.
5. A March 10, 2005, notarized declaration by [REDACTED] who stated that he and the applicant have been friends for more than 15 years. Mr. [REDACTED] specifically cited to an incident in 1986 when applicant helped provide a vehicle for the affiant to use to commute to work and school. Mr. [REDACTED] provided his address and telephone number. Although not required, the letter did not include any supporting documentation of [REDACTED]'s presence in the United States during the requisite period. He failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The letter provides minimal probative value.

6. An April 1, 2005, notarized declaration by [REDACTED] who stated that he has known applicant for approximately 20 years, having met through a mutual friend in August 1985 in San Jose. [REDACTED] provided his business address and telephone number. Although not required, the letter did not include any supporting documentation of [REDACTED]'s presence in the United States during the requisite period. He failed to indicate how he dated his acquaintance with the applicant or how frequently he saw the applicant. The letter provides minimal probative value.
7. An undated declaration by [REDACTED], who stated that the applicant worked as a certified nursing assistant for Cal Care Services since May 2, 1983 to the present. [REDACTED] failed to provide the applicant's address at the time of employment, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The absence of sufficient details and supporting documentation detracts from the credibility of the affiant.
8. A July 23, 1990, sworn affidavit by [REDACTED] who stated that he has first-hand knowledge of the applicant's continuous residence in the United States since "1982 because he is my friend." Although not required, the letter did not include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to provide any specific information about his relationship with the applicant or a substantive basis for his first-hand knowledge of the applicant's presence in the United States since 1982. The affiant also failed to indicate how he met the applicant or how frequently he saw the applicant. The letter provides minimal probative value.
9. A July 22, 1990, sworn affidavit by [REDACTED], who stated that she has first-hand knowledge of the applicant's continuous residence in the United States since "1981 because we've been communicating since then." Although not required, the letter did not include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to provide any specific information about her relationship with the applicant or a substantive basis for her first-hand knowledge of the applicant's presence in the United States since 1981. The affiant also failed to indicate how she met the applicant or how frequently she saw the applicant. The letter provides minimal probative value.
10. A July 22, 1990, sworn affidavit by [REDACTED] (illegible handwriting), who stated that she has first-hand knowledge of the applicant's continuous residence in the United States since "1982 because he is a family friend and also a friend to my brother." Although not required, the letter did not include any supporting documentation of the affiant's presence in the United States during the requisite

period. The affiant failed to indicate how she met the applicant or how frequently she saw the applicant. The letter provides minimal probative value.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the author's presence in the United States. Only three declarants, [REDACTED] and [REDACTED] placed the applicant in the United States prior to January 1, 1982. All of these declarants failed to provide any detailed information regarding the applicant's claimed entry in June 1981. All of the declarants claimed the applicant resided in the United States during the statutory period, but they provided statements of minimal probative value. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

### Criminal History

The second issue in this proceeding is whether the applicant is ineligible to the United States based on his four misdemeanor convictions.

The regulation at 8 CFR § 245a.11(d) states:

An eligible alien, as defined in § 245a.10, may adjust status to LPR status under LIFE Legalization if he or she is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in § 245a.18, and that he or she:

- (1) Has not been convicted of any felony or of three or more misdemeanors committed in the United States . . . .

A misdemeanor is defined as a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the terms such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). 8 C.F.R. § 245a.1(o)

The record contains a certified true copy of court records from the Superior Court of California, County of Los Angeles, dated March 1, 2005. The record indicates that the applicant was charged on or about February 22, 1994 on four counts, including California Penal Codes 459, 470B, 484(G)(a), and 664/487(a). The record reflects that on March 22, 1994, the applicant plead guilty to

all four counts in the Superior Court of California, in Los Angeles, California (Case No. [REDACTED])

The record reflects that the applicant was sentenced to 3 years probation, 90 days in the county jail, and required to pay a fine of \$200.00. On February 22, 1997, the Court deemed the 459 burglary offense to be a misdemeanor pursuant to section 17 Penal Code, probation was terminated and the plea of guilty set aside. The case was dismissed per penal code section 1203.4.

On appeal, counsel asserts that it is unclear whether [REDACTED] filed 17(b) Motion changed or eliminated any of these counts. Counsel further asserted that the applicant did not provide the criminal complaint regarding his arrest and conviction. Counsel contends that it is unknown whether the applicant's crimes were separate or whether they arose out of a single action. Counsel contends that the criminal conduct arose out of a single scheme of conduct and, therefore, is in fact one conviction with four counts.

The applicant has the burden to establish by a preponderance of the evidence that he is eligible for adjustment of status under section 1104 of the LIFE Act and otherwise admissible to the United States. 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). Here, the applicant failed to provide evidence to adequately assess the convictions and court proceedings. The record is unclear whether the applicant was convicted on one count or all four counts.

While counsel contends that there is only one conviction because the applicant was only punished for one violation of the penal code, this is not clearly reflected in the record. The record clearly reflects that the applicant pled guilty to violation of four separate sections of the penal code.

Beyond the decision of the director, an alien is inadmissible if he has been convicted of a crime involving moral turpitude (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 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. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

On March 22, 1994, the applicant pled guilty to all four counts of the California Penal Code 459 (burglary), 470B (forgery), 484(G)(a) (theft), and 664/487(a) (grand theft) in the Superior Court of California, in Los Angeles, California.

It is well settled as a matter of law that the crimes of burglary, forgery, theft and grand theft are ones involving moral turpitude, which render the applicant inadmissible. *Baer v. Norene*, (1935, CA9 or)

79 F.2d 340, *Da Rosa Silva v. INS*, 263 F. Supp. 2d 1005, 1011 (E.D. Pa. 2003), *Afzal v. Gonzales*, 203 Fed. Appx. 830 (9<sup>th</sup> Cir. 2006). *Martinez-Perez v. Ashcroft*, 93 Fed. Appx. 153 (9<sup>th</sup> Cir. 2004).

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).

Counsel contends that applicant falls under the petty offense exception because maximum penalty for *burglary* is less than one year imprisonment and applicant was not sentenced to imprisonment for more than six months. However, as the applicant has committed four crimes involving moral turpitude, the petty offense exception is inapplicable. Therefore, the above crimes involving moral turpitude render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Based on the above discussion, the AAO affirms the director's decision finding the applicant ineligible for permanent resident status due to his four criminal offenses. The AAO also affirms the director's finding that the applicant failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, the applicant is ineligible for permanent resident status under Section 1104 of the LIFE Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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