



U.S. Citizenship  
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Services

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FILE:



Office: CHICAGO

Date: DEC 18 2008

MSC 02 236 62122

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. 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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because the evidence of record did not establish that the applicant resided continuously in the United States in an unlawful status for the requisite period of time.

The applicant is represented by counsel on appeal. Counsel asserts that the applicant submitted sufficient proof in the form of affidavits, school letters, and other documents to establish that he resided in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

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).

Documents in the record before the AAO indicate that the applicant has an arrest record. An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status. 8 C.F.R. § 245a.18(a)(1). "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. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"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 such alien 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).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The AAO notes that on December 16, 2003, the U.S. Citizenship and Immigration Services (USCIS) district office requested that the applicant submit a sworn statement and certified court dispositions for each and every arrest and charge, specifically, for an arrest occurring on September 24, 1990. In a response dated December 19, 2003, the applicant submitted a notarized statement from [REDACTED] of the Public Records Research Service, wherein [REDACTED] affirms that he conducted a search of the criminal records for Sullivan County, Tennessee on the applicant, with no results. The AAO finds this statement to be irrelevant to the application for permanent residence. There is no nexus between the applicant and the state of Tennessee at any point in time; therefore, [REDACTED]'s affidavit does not support the applicant's request for permanent residence.

However, the record before the AAO contains a copy of an Indictment from the Circuit Court of the 18<sup>th</sup> Judicial Circuit; De Page County, Illinois. The applicant is charged with one count of *Forgery*, (Docket # \_\_\_\_\_, in violation of 720 ILCS 5/17-3(a)(2) and two counts of *Theft*, in violation of 720 ILCS 5/16-1(a)(1)(A) (Docket # [REDACTED] and [REDACTED]. The indictment indicates that the applicant falsely represented himself as another person to obtain an automobile loan in the amount of \$14,788.83 and forged a check in the same amount. The applicant pleaded guilty to one count of theft<sup>1</sup>, was sentenced to a term of probation for 24 months, ordered to perform 150 hours of public service and ordered to make restitution for the full amount of the fraudulent loan.

The applicant's conviction for *Theft* is a crime involving moral turpitude (CIMT). *See Esquivel v. Mukasey*, 543 F.3d 919 (7<sup>th</sup> Cir. 2008). An applicant who has been convicted of a CIMT is inadmissible, and therefore ineligible for permanent resident status. But, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception. *See* 8 U.S.C. § 1182(a)(2)(A)(ii). A CIMT will meet the petty offense exception if "the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months" *or* the crime was committed when the alien was under 18 years of age. The petty offense exception does not apply to the applicant because he was not under 18 years of age when the crime was committed and he was sentenced to 24 months of supervised probation. Because of his conviction for a crime involving moral turpitude, the applicant is ineligible for adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(2). Within the provisions of the LIFE Act, Congress has provided no waiver for a CIMT as a ground of inadmissibility.

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<sup>1</sup> The record indicates that one count of theft was reduced to a Class A misdemeanor upon motion of the State's attorney. The applicant pleaded guilty to the misdemeanor theft violation.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act 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 from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

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