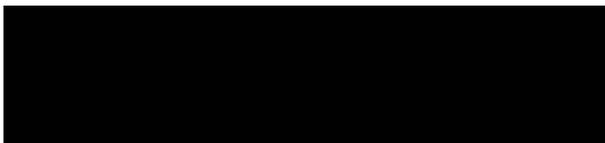


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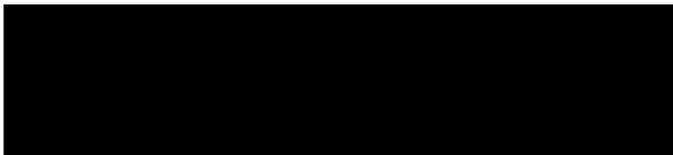
Office: LOS ANGELES

Date: OCT 03 2008

IN RE: Applicant: [REDACTED]

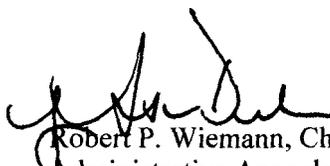
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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. If your appeal was sustained, or if your case 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.


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 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 respond to a request for evidence as required by 8 C.F.R. § 103.2(b)(13). The director stated that the applicant failed to provide final original court certified dispositions of all his arrests. The director also determined that the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel maintains that he did fulfill the request for evidence and provided the director with a copy of a court certified document regarding his arrest, dated December 19, 2005. In addition, counsel submits the applicant's criminal record from the State of California, Bureau of Identification and Information, which was not received by the applicant until April 30, 2007, and May 3, 2007. Based on the above evidence, counsel contends that the applicant's conviction of petty theft in 1992 falls under the petty offense exception and does not disqualify him from adjusting his status under the LIFE Act.

There are two issues in this proceeding: 1) whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant's claim of continuous unlawful residence in the United States during the requisite period is probably true, and 2) whether the applicant's prior convictions render him ineligible for lawful permanent resident status under the LIFE Act.

1. Continuous, Unlawful Residence

The first issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant's claim of continuous unlawful residence in the United States during the requisite period is probably true.

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 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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f).

Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On April 21, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). In support of his application, the applicant provided five form affidavits with virtually the same information. All of the affiants stated that they have personally known the applicant in the United States since 1981, and that to the best of their knowledge the applicant has resided

continuously in the United States since 1981. All of the affidavits are dated on October 3, 2003, and notarized by the same notary. The affiants failed to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his places of residence or the circumstances of his residence over the prior eleven or twelve years of their claimed relationships. Although they claimed to have known the applicant since 1981, they failed to note how or where they met him. Lacking relevant details, these affidavits have minimal probative value.

The record contains an affidavit, dated October 23, 1993, from [REDACTED] who stated that he has known the applicant since 1988. The affiant also stated that he has first hand knowledge of the applicant's continuous residence in the United States since 1988 because he lived in the same neighborhood. The affiant failed to provide details regarding his claimed friendship with the applicant, the exact time period of their friendship in 1988 and whether it falls within the statutory period, or how or where he met the applicant. Lacking relevant details, the affidavit has minimal probative value.

The record also contains an affidavit, dated November 3, 1993, from [REDACTED]. The affiant stated that he has personal knowledge that the applicant has resided in the United States since October 1981 to the present. The affiant stated that they met while working together in landscaping. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his places of residence or the circumstances of his residence over the prior eleven or twelve years of their claimed relationships. Because the affidavit is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although there several documents, all seven of the affidavits in the record that refer to the relevant years are bereft of sufficient detail to be found credible or probative; not one affiant indicates credible personal knowledge of the applicant's entry into the United States in 1981 or credibly attests to his presence in the United States from his 1981 to 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in November 1980 through California and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the

applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act.

2. Criminal Record

The second issue before the AAO is whether the applicant's prior convictions render him ineligible for lawful permanent resident status under the LIFE Act.

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 provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 245a.18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

"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).

The record indicates that a Notice of Intent to Deny (NOID), dated September 11, 2006, was sent to the applicant at the wrong apartment number. The NOID was resent to the applicant at his correct apartment number on October 3, 2006. In the NOID, the director stated that the applicant failed to provide final original Court certified dispositions for all his arrests. Rather, the applicant submitted documents providing instructions on how to obtain copies of the court dispositions from the California Department of Justice, Bureau of Criminal Identification. The director provided the applicant with 30 days from the date of the NOID to explain any discrepancies or to rebut any adverse information. In the Notice of Decision, dated November 16, 2006, the director stated that the applicant failed to submit a rebuttal to the proposed grounds for denial and denied his application.

On appeal, counsel submits two documents from the State of California, Bureau of Identification and Information, dated April 30, 2007, and May 3, 2007. The documents indicate the following:

1. On June 15, 1992, the applicant was arrested and charged with *theft/petty theft*, in violation of section 484/488 of the California Penal Code. On June 18, 1992, the

applicant was convicted of *theft/petty theft*, a misdemeanor, and sentenced to 36 months probation and five days imprisonment. (Case No. [REDACTED]).

2. On March 19, 1993, the applicant was arrested and charged with *driving under the influence of alcohol or drugs*, in violation of section 23152(a) of the California Vehicle Code. On March 19, 1993, the applicant was convicted of *driving under the influence of alcohol or drugs*, a misdemeanor, and sentenced to 29 days confinement and a fine of \$240.00. (Case No. [REDACTED]).
3. On July 6, 1992, the applicant was arrested and charged with *driving when privilege suspended or revoked for other reasons*, in violation of section 14601.1(a) of the California Vehicle Code. On July 6, 1992, the applicant was convicted of *driving when privilege suspended or revoked for other reasons*, a misdemeanor, and sentenced to 10 days confinement. (Case No. [REDACTED]).

The AAO also notes that 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).

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.)

As noted above, the applicant was convicted of *theft/petty theft*, and sentenced to 36 months probation and five days imprisonment. It is well settled as a matter of law that the crime of theft is one involving moral turpitude, which renders the applicant inadmissible. *Da Rosa Silva v. INS*, 263 F. Supp. 2d 1005, 1011 (E.D. Pa. 2003). However, as asserted by counsel, the applicant does qualify under the petty offense exception as the maximum penalty does not exceed imprisonment for one year, and he was sentenced to five days imprisonment. Therefore,

the above crime does not render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

However, based on the above criminal record, the applicant has been convicted of three misdemeanors in the United States. Accordingly, he is ineligible for adjustment to permanent resident status under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 245a.18(a)(1).

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.