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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

L2



FILE: [REDACTED] Office: LOS ANGELES Date: **APR 02 2009**  
MSC 02 247 65785

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).

IN BEHALF OF APPLICANT: Self-represented

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, Los Angeles, California and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant: 1) had been convicted of at least three misdemeanors in the United States; and 2) failed to present the required Medical Examination, Form I-693.

On appeal, the applicant asserts that she did submit a timely response to the Notice of Intent to Deny. The applicant submits an additional expungement order and a verification of tuberculin skin test.

The first issue to be addressed is the applicant's failure to submit the Form I-693.

The regulation at 8 C.F.R. § 245a.12(d) states, in pertinent part, that each application must be accompanied by a report of medical examination.

The regulation at 8 C.F.R. § 103.3(13)(i) states, in pertinent part, if the applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application may be summarily denied as abandoned, denied based on the record or denied for both reasons.

At the time the applicant filed her LIFE application, the required Form I-693 was not included.

At the time of the applicant's LIFE interview, on November 20, 2007, a Form I-72 was issued requesting that the applicant submit a Form I-693. The applicant, however, failed to respond to the notice. The director, in issuing her Notice of Intent to Deny on January 23, 2008, advised the applicant of her failure to submit the required Form I-693.

On appeal, the applicant asserts that she submitted a timely response to the Notice of Intent to Deny. A review of the record, however, does not support the applicant's assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant submits a document indicating the results of a tuberculin skin test given on November 20, 2007. This document, however, cannot be considered as it was neither signed by a medical doctor nor submitted in a sealed envelope. Further, the required Form I-693 was not submitted.

As the applicant failed to comply with the regulatory requirement, the, the applicant is ineligible for permanent resident status under the LIFE Act.

The second issue to be addressed is the applicant's criminal history.

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. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 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).

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 Immigration and Nationality Act (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).

The record contains court dispositions which reflect the applicant's criminal history in the state of California as follows:

1. On or about December 19, 1987, the applicant was arrested and subsequently charged with theft of property, a violation of section 484(a) PC. On March 1, 1988, the applicant was convicted of this misdemeanor offense. The applicant was placed on probation for two years, ordered to pay a fine and serve five days in jail. On June 8, 2004, the conviction was expunged in accordance with section 1203.4 PC. [REDACTED]
2. On July 11, 1993, the applicant was arrested and subsequently charged with theft of property, a violation of section 484(a) PC. On September 20, 1993, the applicant was convicted of this misdemeanor offense. The applicant was placed on probation for two years and ordered to serve 15 days in jail. On April 5, 2005, the conviction was expunged in accordance with section 1203.4 PC. [REDACTED]
3. On October 25, 1997, the applicant was arrested and subsequently charged with petty theft with a prior, a violation of 666 PC. On December 1, 1997, the applicant was convicted of this misdemeanor offense. The applicant was placed on probation for three years, ordered to pay a fine and serve five days in jail. On June 7, 2004, the conviction was expunged in accordance with section 1203.4 PC. [REDACTED]

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge,

dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The Board of Immigration Appeals (BIA) revisited the issue in *Matter of Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002) and concluded that Congress did not intend to provide any exceptions from its statutory definition of a conviction for expungement proceedings pursuant to state rehabilitative proceedings.

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the BIA found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. The BIA reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains “convicted” for immigration purposes.

It is a long-standing principle that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all Citizenship and Immigration Services offices.

Therefore, pursuant to the above precedent decisions, no effect is to be given to the applicant’s expungements.

The applicant is ineligible for the benefit being sought due to her misdemeanor convictions. 8 C.F.R. §§ 245a.11(d)(1) and 245a.18(a)(1). No waiver of such ineligibility is available. Petty theft is a crime involving moral turpitude. Therefore, the applicant's convictions for this offense renders her inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). There is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 C.F.R. § 245a.18(a)(2)(i). **The applicant is ineligible and inadmissible for permanent resident status under section 1104 of the LIFE Act.**

An alien applying for adjustment of status has the burden of proving 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 under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.12(e). The applicant has failed to meet this burden.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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