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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
*Administrative Appeals Office* MS 2090  
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U.S. Citizenship  
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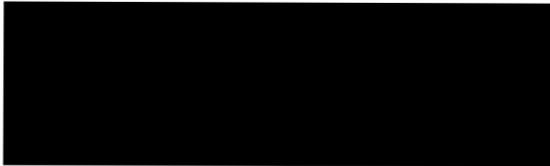
**AUG 07 2009**

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

The district director denied the application pursuant to § 212(a)(2)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(C)(i), as an alien that the Attorney General knows or has reason to believe is or has been a trafficker in a controlled substance, or has actively aided and abetted or conspired with others in the illicit trafficking of a controlled substance. Specifically, the director stated that the record revealed that the applicant had been arrested by the Houston police in 1993 while in possession of a loaded revolver and a large amount of cash, and that there was reason to believe that the applicant was a member of a secondary cocaine distribution and money laundering organization responsible for warehousing and distributing large amounts of cocaine throughout the country.

The applicant is represented by counsel on appeal. Counsel asserts that the unlawful weapons possession charge was dismissed, and that there is no documentary evidence to establish that the applicant at the time of his arrest was possessed of a large amount of cash. Counsel also maintains that the police report does not give rise to the assumption that the applicant was involved in drug trafficking, only that the applicant was arrested leaving the scene of an area that was a “high intensity drug trafficking area”. Therefore, counsel concludes that the applicant is eligible for permanent resident status under the LIFE Act.

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 applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5). To meet his or her burden of proof, an applicant

must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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).

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 petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

Furthermore, 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).

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, 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. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *rev'd on other grounds, Pickering v. Gonzales*, 465 F.3d 263 (6<sup>th</sup> Cir. 2006); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

Additionally, the INA specifies that other classes of aliens suspected of involvement in criminal activities are ineligible to receive visas and are ineligible to be admitted to the United States:

(C) Controlled substance traffickers

Any alien who the consular officer or the Attorney General *knows or has reason to believe*—(emphasis added)

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

Section 212(a)(2)(C) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1182(a)(2)(C).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, (2) has continuously resided in the United States in an unlawful status for the requisite period of time and (3) is otherwise admissible to the United States. The AAO has reviewed all of the documentary evidence and information in the file regarding the events surrounding the applicant's arrest in 1993. We will discuss each piece of documentary evidence as it appears in the file.

The record contains a letter from the Harris County, Texas, District Clerk's Office, dated December 29, 2008 that states the criminal records regarding the applicant have been destroyed pursuant to the state authorized record retention schedule. The letter identifies the applicant by name and ( [REDACTED] ). This record is of no probative value regarding the issue of the applicant's criminal arrest.

The record before the AAO also includes a photocopy of an order issued by the Harris County Criminal Law Court No. 12, dated August 19, 1994, granting the applicant's motion to dismiss the Criminal [REDACTED]. The box marked "motion to suppress granted" is checked. Additionally, the record contains a photocopy of a police report that explains in some detail the circumstances of the applicant's arrest on January 13, 1993. The police report states that officers and agents of the Houston High Intensity Drug Trafficking Area (HIDTA) Task Force, while on route to execute a narcotics search warrant at a specific address, observed the applicant and another individual arrive at the address, and subsequently leave the premises after approximately twenty minutes. The applicant's vehicle was stopped by the police and a loaded 9mm pistol was discovered in the applicant's possession.

The circumstances surrounding the seizure of the loaded weapon were thereafter the subject of a suppression hearing. The record provides a transcript of these proceedings conducted on April 23, 1993. The officer testified under oath that the HIDTA Task Force narcotics officers requested additional assistance from patrol officers in investigating a vehicle that left a residential address that was the subject of a narcotics search warrant. The officer testified that the applicant, upon leaving the premises as noted above, drove in an erratic manner while failing to observe traffic signals. The applicant's vehicle was stopped on account of the traffic violations and the applicant was then arrested upon the discovery of the loaded weapon. The applicant was charged with the unlawful carrying of a loaded weapon. This charge was dismissed pursuant to the order of the court dated August 19, 1994.

The remaining document in the record that alleges the applicant was involved in drug trafficking activities is an FBI report dated October 17, 2006. This memo states that the applicant's name was mentioned in conjunction with a RICO drug investigation conducted in the Houston area. It states that the applicant was allegedly a member of a secondary cocaine distribution and money laundering organization that had ties to Buenaventura, Medellin, and Cali, Colombia. This organization is alleged to have warehoused multi-kilo amounts of cocaine in the Houston area for redistribution to other drug trafficking organizations. The memo notes that on January 13, 1993, Houston agents executed a search warrant and arrested several individuals associated with this organization, including the applicant.

An alien who is an applicant for admission into the United States, as in this case, an applicant for permanent resident status under the terms of the LIFE Act, has the burden of establishing admissibility by a preponderance of the evidence. 8 C.F.R. § 245a.12(e). The AAO has reviewed the relevant case law including the precedential authority of the jurisdiction in which this case arises, the Ninth Circuit Court of Appeals, as well as the administrative decisions of the Board of Immigration Appeals (BIA). First, the AAO acknowledges that there is no documentary evidence in the record presently before us to support the director's statement in the Notice of Denial that the applicant was arrested while in possession of a large sum of cash. None of the documents cited above makes reference to a large sum

of cash, and we withdraw that part of the director's decision as a basis for denial of the application for permanent residence.

Nonetheless, our review of the relevant law clearly establishes that, in order to sustain inadmissibility on criminal grounds, a criminal conviction is unnecessary if the reviewing authority relies upon that part of the statute concerning "reason to believe" that the applicant is a drug trafficker. 8 U.S.C. § 1182(a)(2)(C); *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977). Therefore, the dismissal of the criminal arrest against the applicant that resulted from the suppression hearing does not eliminate all immigration consequences of the criminal charges. Additionally, the BIA has equated "reason to believe" with "probable cause." *Matter of U-H-*, 23 I&N Dec. 355, 356 (BIA 2002). In affirming inadmissibility based on the "reason to believe" charge, the Ninth Circuit has ruled that the determination that the applicant is engaged in drug trafficking must be based on reasonable, substantial and probative evidence. *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000). Furthermore, the Ninth Circuit has rejected a constitutional challenge to the "reason to believe" charge of inadmissibility, finding that it was not "void for vagueness." *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 822-24 (9<sup>th</sup> Cir. 2003).

Bearing these precepts in mind, the AAO affirms that that the director "knows or has reason to believe" that the applicant, at the time of his arrest in 1993, was trafficking in controlled substances, or was involved with others who are controlled substance traffickers. The director's conclusions are supported by reasonable, substantial, and probative evidence. *Alarcon-Serrano v. INS*, *supra*. The FBI report, the police report, and the testimony of the arresting officer provide substantial evidence to support a finding that the applicant is inadmissible on the criminal grounds outlined in Section 212(a)(2)(C) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1182(a)(2)(C), as someone the Attorney General knows or has reason to believe is a trafficker in a controlled substance. The application for permanent residence (Form I-485) must be denied on that basis.

The AAO has also reviewed the evidence in the file regarding the applicant's entry and residence in the United States for the requisite period. Aside from his own assertions, the record contains a statement dated January 16, 2002 from the Seafood Mar Restaurant that states the applicant was employed there from November of 1989 to February of 1991, and a letter from Academy Sports and Outdoors dated June 23, 2003 that identifies the applicant as currently employed there since January of 2003. As these periods of employment are outside the statutory period of January 1, 1982 to May 4, 1988, the letters have no probative weight.

The record also includes a letter from Carmen's Lawn Service dated January 28, 2002, that states the applicant was employed as a "lawn-boy" from May of 1986 to March of 1987. Although this letter encompasses some of the requisite period of time, it does not meet the requirements for employment records kept in the ordinary course of business and therefore has little probative weight. 8 C.F.R. section 245a.(3)(i).

The record also includes IRS documents for 2002, 2001, 2000. As none of the tax documents cover the requisite years they have no probative weight. The only documentary evidence that the applicant

submitted to corroborate his residence in the United States for the requisite period is an employment letter from [redacted] owner of Pistolero's Paint and Body Shop. [redacted] avers that the applicant was employed there from May of 1981 to October of 1984 and that he was paid in cash. First, this statement does not meet the federal regulatory requirements regarding past employment letters as outlined in 8 C.F.R. section 245a.(3)(i). Second, this evidence does not encompass the entire requisite period of time to establish unlawful residence from January 1, 1982 up to and including May 4, 1988. Therefore, this document will be given such weight as is appropriate.

The remainder of the evidence regarding entry and residence includes various sales and rental receipts, a letter with an obscured postmark, and a copy of a Western Union money transfer telegram from 1987. As noted *supra*, 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.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). None of the relevant evidence submitted by the applicant to establish entry and residence is independent or amenable to verification. When viewed in its entirety, it is not sufficient to lead the AAO to conclude that the claim is "probably true" or "more likely than not." *See U.S. v. Cardozo-Fonseca, supra.*

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.