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U.S. Citizenship
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FILE: [REDACTED]
MSC-03-207-60051

Office: LOS ANGELES Date:

FEB 17 2009

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. 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 if your case was 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 director denied the application because the applicant failed to submit requested court documents relating to his arrest on criminal charges in 2001 in the state of California. The director observed that the applicant was advised to submit the requisite court documents explaining the final disposition of the charges in a Request for Evidence (Form I-72) dated August 7, 2007. The applicant failed to submit the requested court documents within the allotted period of time. Thus, director denied the application, finding him ineligible for adjustment of status.

The applicant is represented by counsel on appeal. The record before the AAO contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) dated August 22, 2008 and filed by the Immigrants Legal Options Law Office. However, the AAO notes that the Notice of Appeal (Form I-290B) is signed by the applicant with the notation that a brief in support of the appeal would be forthcoming. To date, no brief or additional documents have been filed.

The applicant states on appeal that he was arrested in 2005 “but there was no charges (sic).” The applicant also states that the California Department of Justice confirms that he has no criminal record.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 8 C.F.R. § 245a.11(b).

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).

Additionally, an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is not eligible to adjust to lawful permanent resident status under the LIFE Act. See 8 C.F.R. § 245a.18(a)(1).

At issue in this proceeding is whether the applicant has submitted the appropriate court documents to meet his burden of establishing that he is admissible to the United States, *i.e.*, that he has not been convicted of three misdemeanors or a felony and that he is otherwise eligible to adjust to lawful permanent resident status. In this case, the applicant has failed to meet this burden because he has provided no final dispositions regarding the charges filed against him in California.

The AAO has reviewed all of the documents in the file individually and in their entirety, including the documents the applicant submitted in response to the Request for Evidence (RFE). The record before the AAO contains a letter from the Sheriff's Office of San Bernardino County dated March 7, 2007. The letter only states that the applicant, identified as [REDACTED] has a felony arrest record. The letter is signed by [REDACTED]. A second letter dated March 8, 2007, also issued by the Sheriff's Office of San Bernardino County, is a certified original and states that the applicant was arrested on April 18, 2001 and charged with violating section 422 of the California Penal Code – *Threatening a Crime with Intent to Terrorize*. The court case no. is identified as: [REDACTED]. There is no indication of the disposition of this arrest.

The record before the AAO also contains two letters from the Superior Court of California, Riverside County. The first letter is a certified original document signed by [REDACTED] dated August 29, 2007. The letter states that a search of the court indexes for the dates including June 6, 2005 to August 29, 2007 under the applicant's name does not produce any records. The second letter from the Superior Court is dated October 25, 2007 also reports the same lack of results.

Finally, an FBI report confirms the applicant's arrest on April 18, 2001. The report indicates that the criminal threats charge was dismissed for lack of sufficient evidence. However, the FBI report also reveals that the applicant was arrested on June 4, 2004 by the Riverside County Sheriff's Office and charged with one count of *sodomy with a person under 14*, in violation of section 286(b)(1) of the California Penal Code, and one count of *lewd and lascivious conduct with a child under 14*, in violation of section 288(a) of the California Penal Code. Our review of the California Penal Code indicates that a violation of section 288(a) (lewd and lascivious conduct) is a felony offense punishable by imprisonment for three, six, or eight years. Additionally, a conviction for sodomy may be classified as either a misdemeanor or a felony and carries with it punishment ranging from

one year in jail up to eight years in prison, depending upon the age of the perpetrator and the age of the victim.

Therefore, the AAO cannot determine from the record whether the charge was dismissed, whether the applicant pleaded guilty or was convicted of this offense or a different offense involving this particular incident, and if the applicant was convicted, what kind of sentence was imposed by the court.

None of the documents submitted by the applicant provides sufficient explanatory information to enable the AAO to determine whether the applicant was convicted for either of the offenses listed above. Both of these offenses carry with them the possibility of felony convictions and are considered to be crimes involving moral turpitude (CIMT) for which no waiver of inadmissibility exists.¹

It is not sufficient to meet the applicant's burden of proof to simply provide letters from the Superior Court of California, Riverside County that state no records have been found relating to the charges outlined above. Federal regulations provide that, in all applications or petitions for immigration benefits (permanent resident status in this case) the applicant must show that the requested evidence is unavailable. Any letter that is submitted to show that a criminal record is unavailable must be: (1) an original, (2) on letterhead, and (3) from the relevant government authority that serves as the custodian of records. 8 C.F.R. § 103.2(b)(2)(ii). The government letter must indicate the reason the record does not exist and also indicate whether similar records for the time and place are available. The letter from the Superior Court of California dated August 29, 2007 generally meets these requirements.

However, in the absence of primary evidence, the applicant must then submit relevant "secondary evidence." If the applicant does not submit secondary evidence, they must submit at least two affidavits from persons who are not party to the application and who have direct knowledge of the **event and circumstances. In criminal record cases, this would include affidavits from the prosecuting attorney, the defense attorney, the judge, or some other individual (other than derivative family members) who has direct knowledge of the disposition of the arrest.**

The AAO notes that despite the request for evidence dated August 7, 2007, the applicant failed to provide final dispositions for the arrests listed above and this deficiency has not been overcome on

¹ Sex offenses, other than statutory rape, are generally considered to be CIMT's in the Ninth Circuit Court of Appeals. See *Gonzalez-Alvarado v. INS*, 39 F.3d 245, 246 (9th Cir. 1994) ("Incest . . . involves an act of baseness or depravity contrary to accepted moral standards, and we hold that it too is a 'crime involving moral turpitude.'"); see also *Morales v. Gonzales*, 478 F.3d 972, 978 (9th Cir. 2007) (Washington conviction for communication with a minor for immoral purposes is a CMT).

appeal. Thus, the applicant has not met his burden of proof and his application must be denied on that ground. *See* section 245A(b)(1)(C) of the Act; 8 C.F.R. § 103.2(b)(2)(i) and (ii); 8 C.F.R. 245a.3(g)(5).

Thus, the applicant is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1). The appeal is dismissed.

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