



U.S. Citizenship  
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FILE:

MSC-02-024-61540

Office: LOS ANGELES

Date: JUL 09 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

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 (AAO) on appeal. The appeal will be dismissed.

The director initially denied the application on February 5, 2007 because the applicant had not met his burden of proof that he initially entered the United States on or before January 1, 1982 and remained here in an unlawful status for the requisite period. The director also denied the application because the applicant failed to provide a final court disposition for his arrest on March 20, 1993.

On March 8, 2007, the applicant submitted a letter stating that “the mistakes that I made in the past were wrong”, requesting that the director reconsider the evidence of residence and averring that he has been present in the United States since 1981 but was generally employed for cash payments and “did not keep any receipts to prove my physical presence.” The applicant also submitted a Social Security earnings statement and tax returns to establish his presence for the qualifying period of time. Finally, the applicant submitted a number of court documents, including a letter dated March 7, 2007, from the Clerk’s Office for the Superior Court of California, County of Los Angeles, which indicates no criminal record exists for an arrest on March 20, 1993.

Thereafter, the director issued a second Notice of Denial dated October 30, 2007. The director determined that the applicant had established entry, physical presence, and continuous residence for the requisite period, but that the applicant was not eligible for adjustment to permanent resident status because the evidence submitted by the applicant on March 8, 2007 indicated that he had three misdemeanor convictions in 1991 and 1997. The director concluded that the applicant was not eligible for permanent residence under the terms of the LIFE Act. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant represents himself on appeal. The applicant does not specify the reasons for the appeal, but asks generally that his case be reconsidered. The applicant does not discuss the three convictions identified in the court records he submitted in response to the original Notice of Denial issued on February 5, 2007.

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.

Furthermore, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to 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).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for temporary 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." *Lafarga v. INS*, 170 F.3d 1213, 1214-15 (9th Cir. 1999) (quoting 8 U.S.C. § 1182(a)(2)(A)(ii)(II)); see also *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843-46 (9th Cir. 2003). For the purpose of the petty offense exception, "the maximum penalty possible' . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed." *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 835 (9th Cir. 2008) (offense of bribery of a public official did not qualify for petty offense exception where statutory maximum for offense was 15 years).

In this case, the record contains photocopies of a number of minute orders issued by several judicial districts in the municipal courts of Los Angeles County, California. These court documents reveal three criminal convictions:

1. [REDACTED] The applicant pleaded guilty on March 25, 1991 to one count of violating section 12500(a) of the California Vehicle Code – *Unlicensed Driver* and to one count of violating section 23152(B) of the California Vehicle Code – *Driving with Blood Alcohol Level in Excess of .08%*. The applicant was sentenced to serve 10 days in jail, 36 months probation, and ordered to pay a fine or perform 17 days of community service. Both convictions are listed as misdemeanor offenses.
2. [REDACTED] The applicant pleaded guilty on June 4, 1997 to one count of violating section 273.5(A) of the California Penal Code – *Inflicting Corporal Injury on a Spouse*. The applicant was sentenced to serve 6 days in jail and 36 months probation, and ordered to complete 52 counseling sessions on domestic violence. This offense is listed as a misdemeanor.

The issue in this case is whether the applicant's three misdemeanor convictions disqualify him for permanent resident status, or whether the applicant's 1997 conviction is not a disqualifying criminal conviction because it falls within the purview of the petty offense exception to a

conviction for a crime involving moral turpitude. The AAO must first determine whether a conviction under section 273.5 of the California Penal Code – *Inflicting Corporal Injury on a Spouse*, is a CIMT. This section provides:

- (a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment;
- (b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section;
- (c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

The Ninth Circuit Court of Appeals, which is the jurisdiction in which this case arises, has previously ruled that a conviction for spousal abuse under section 273.5(A) of the California Penal Code is a crime involving moral turpitude. *See Grageda v. INS*, 12 F.3d 919 (9<sup>th</sup> Cir. 1993). The court's reasoning in *Grageda* regarding spousal abuse was subsequently followed in *Gonzalez-Alvarado v. INS*, 39 F.3d 245, 246 (9<sup>th</sup> Cir. 1994), *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9<sup>th</sup> Cir. 2006), and *Nicanor-Romero v. Mukasey*, 523 F.3d 992, 997 (9<sup>th</sup> Cir. 2008). Consequently, there is no dispute that a conviction under section 273.5(A) of the California Penal Code for inflicting corporal injury on one's spouse is a CIMT.

The remaining issue is whether a conviction under this section of the statute is amenable to the petty offense exception for the purpose of establishing admissibility. Under the terms of the statute listed above, the statutory maximum sentence for spousal abuse ranges between a fine of up to \$6,000, up to *four years incarceration* or any combination of a monetary fine and some form of imprisonment. Thus, the *statutory maximum* sentence for the crime of spousal abuse under section 273.5 of the California Penal Code may be up to four years of imprisonment, well in excess of the one year incarceration limit needed in order to qualify as a "petty offense." As noted above, for the purpose of the petty offense exception, "'the maximum penalty possible' . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed." *See Mendez-Mendez v. Mukasey, supra*. It is irrelevant that the court documents list the offense as a misdemeanor because it is the *statutory maximum sentence* that is relevant for the petty offense exception.

In essence, section 273.5 of the California Penal Code is a "wobbler" statute in that it includes a range of punishments which fit the federal definition of either a felony or misdemeanor. We note that the statute, as written, considers spousal abuse to be a felony offense, with varying degrees of punishments dependent upon the factual circumstances of the actual criminal incident. Nonetheless, in determining inadmissibility on account of a conviction for a CIMT and the

applicability of the petty offense exception, the AAO looks to the statutory maximum sentence and not the possible range of punishments. *See Mendez-Mendez v. Mukasey, supra.*

The AAO concludes that the applicant is ineligible for permanent resident status pursuant to the terms of the LIFE Act, as he cannot establish that he is otherwise admissible to the United States not only on account of his conviction for a CIMT which is not subject to the petty offense exception, but also because he has three misdemeanor convictions. Congress has provided no waiver for a CIMT or for three misdemeanor convictions as grounds of inadmissibility.

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