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U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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FILE: [Redacted]
MSC-02-247-65763

Office: LOS ANGELES

Date: JUL 09 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 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 denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because she had been convicted of two crimes involving moral turpitude (CIMT) in California. Specifically, the director observed that the applicant's two misdemeanor theft convictions in 1990 and 1991 rendered the applicant ineligible for permanent residence under the terms of the LIFE Act. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant is represented by counsel on appeal. Counsel does not contest the existence of the two convictions. Counsel maintains that the director committed an abuse of discretion in characterizing the convictions as CIMTs and in refusing to allow the applicant to submit a request for a waiver of inadmissibility.

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 “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.* 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 regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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).¹

¹ Additionally, an applicant for admissibility who stands convicted of a CIMT may be eligible for the youthful offender exception if: the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other

The AAO has reviewed all of the evidence in the applicant's file, including the conviction documents, court records, and criminal background investigation reports. The record includes a certified photocopy of a minute order issued by the Municipal Court of Los Angeles, Van Nuys Judicial District, on May 28, 2003. The order reveals that the applicant was convicted on February 6, 1990 for violating section 484(A) of the California Penal Code – *Theft of Property*. [REDACTED] The court suspended the imposition of sentence, ordered the applicant to serve three days in jail and 12 months probation.

The court documents also include a certified photocopy of a minute order issued by the Municipal Court of Los Angeles, San Fernando Judicial District, on August 7, 2006. The order reveals that the applicant was convicted on July 30, 1991 for violating section 484(A) of the California Penal Code – *Theft of Property*. [REDACTED]. An additional charge of violating section 487.1 of the California Penal Code (*Grand Theft Property*) was dismissed pursuant to the terms of a plea agreement. Once again, the court suspended the imposition of sentence, ordered the applicant to serve one day in jail, and 24 months probation. The court also ordered the applicant to stay away from the arrest location and to pay a fine or perform 75 hours of community service. The court documents indicate that the applicant did not pay the court ordered fine, and a bench warrant was issued on December 30, 1991, for the applicant's arrest.

Inasmuch as this case arises within the jurisdiction of the Ninth Circuit Court of Appeals, the precedent decisions of that circuit are applicable. Initially, we note that both convictions involve crimes of moral turpitude. The Ninth Circuit has explained that a crime of moral turpitude involves “base, vile, and depraved conduct that shocks the conscience and is contrary to the societal duties we owe each other.” *Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1069 (9th Cir. 2007) (en banc). The Ninth Circuit has repeatedly ruled that a conviction for theft is considered a crime involving moral turpitude for which no waiver of inadmissibility exists. *See Flores Juarez v. Mukasey*, 530 F.3d 1020 (9th Cir. 2008); *see also USA v. Esparza-Ponce*, 193 F.3d 1133, 1137-38 (9th Cir. 1999) (theft is a crime of moral turpitude) (citations omitted). In this case, the “petty offense” exception is not applicable because the exception is limited to one conviction, whereas the applicant has two convictions for crimes involving moral turpitude.

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 on account of his convictions for two crimes involving moral turpitude.

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

documentation and the date of application for admission to the United States. 8 U.S.C. § 1182(a)(2)(A)(ii)(I). The applicant does not assert that she is eligible for the youthful offender exception and we note that neither offense was not committed when the applicant was under 18 years of age.