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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 03 199 60190

Office: LOS ANGELES

Date: JUN 01 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:

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

The director concluded that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because he was convicted of a felony drug offense in the state of California. Section 1104(c)(2)(D)(ii) of the LIFE Act.

The applicant represents himself on appeal. The applicant does not address the reasons for the director's decision to deny the application. The applicant requests that his "hard work and effort" be taken into consideration and that he has been unable to get an appointment with the "Dept. of Immigration Office in Denver." No new evidence or brief is submitted in support of the appeal.

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.

Documents in the record before the AAO indicate that the applicant has both federal felony convictions for unlawful reentry into the United States subsequent to deportation and alien smuggling, as well as a state felony conviction for unlawful possession of methamphetamine. 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).

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 admissible to the United States. The AAO has reviewed all of the documents in the file in their entirety and we conclude that the applicant's criminal convictions disqualify him for adjustment to permanent resident status.

The evidence in the file includes a Criminal Docket from the Municipal Court of California, County of San Diego [REDACTED] that indicates the applicant pleaded guilty on June 16, 1994 to one count of violation section 11377(a) of the California Health and Safety Code – *unlawful possession of methamphetamine*. This offense is marked as a felony conviction on the docket sheet. The applicant was sentenced to serve 90 days in jail, 3 years of probation, and ordered to pay a fine.

The record also contains a criminal indictment issued by the United States District Court for the Southern District of California, [REDACTED], dated June 12, 1985, wherein the applicant is charged with one felony count of violating 8 U.S.C. § 1326 – *unlawful reentry after deportation*, and one felony count of violating 8 U.S.C. § 1325 – *entry of alien at improper time or place or by misrepresentation and concealment of facts*. The applicant pleaded guilty to both counts on July 26, 1985, was sentenced to 9 months incarceration and was ordered to pay a fine. Both convictions are marked as felony violations on the court documents.

Other documents in the record before the AAO reveal additional arrests and convictions for alien smuggling (October 1, 1980); illegal reentry (November 10, 1980, June 24, 1981, September 25, 1985); and false claim of citizenship (July 19, 1994). Thereafter, on January 11, 1996, the applicant was ordered deported *in absentia* from the United States by order of the immigration judge, pursuant to section 242B(c) of the Immigration and Nationality Act (INA). The applicant was ultimately deported from the United States on October 2, 1997, and in accordance with section 212(a)(9) of the INA, ordered not to reenter the United States for a period of ten years.

In this case, the applicant has both a state felony drug conviction and at least two federal felony immigration convictions. These convictions make the applicant ineligible for adjustment to permanent resident status. *See* 8 U.S.C. § 1182 (a)(2)(A)(C); 8 C.F.R. § 245a.18(a)(1) and (2).

Because of his felony convictions the applicant is ineligible to adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1). Within the provisions of the LIFE Act, there is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

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.

Finally, the AAO notes that the applicant is inadmissible for making a false claim to citizenship, 8 U.S.C. § 212(a)(6)(C)(ii); drug offense, 8 U.S.C. § 212(a)(2)(A)(i)(II), drug trafficking, 8 U.S.C. § 212(a)(2)(C)(i); and seeking reentry within 20 years of removal, 8 U.S.C. § 212(a)(9)(A)(i). For this additional reason, the applicant is ineligible to adjust to permanent resident status under the provisions of the LIFE Act. Section 1104(c)(2)(D) of the LIFE Act.

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