

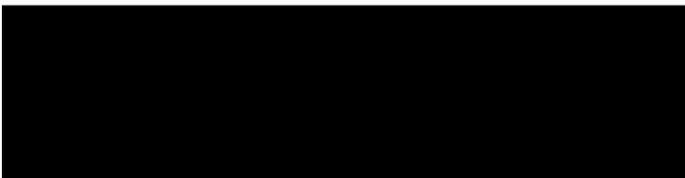


U.S. Citizenship  
and Immigration  
Services

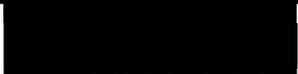
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FILE:



Office: NEW YORK

Date: MAY 05 2009

MSC 02 017 61160

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 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, New York, NY, 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 failed to submit credible evidence that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

The applicant represents himself on appeal. The applicant asserts that the director failed to consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). 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 a federal felony conviction and was ordered excluded and deported from the United States by an immigration judge. 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 conviction and order of deportation disqualifies him for adjustment to permanent resident status.

The evidence in the file includes a Criminal Docket from the United States District Court for the Southern District of New York ( [REDACTED] ) dated October 29, 1999. The docket indicates that on September 13, 1999, the applicant was charged with two counts of violating 18 U.S.C. § 1546 – *Fraud and Misuse of Visas/Permits (False statements to INS)*. The applicant was arrested and taken into the custody of the U.S. Bureau of Prisons on September 14, 1999. On January 25, 2000, the applicant pleaded guilty to one count of fraud and was sentenced to time served, ordered to serve a term of probation for two years and to pay a fine of \$5,000. The violation of 18 U.S.C. § 1546 is listed as a felony offense on the criminal docket.

The applicant's conviction for fraud is a crime involving moral turpitude (CIMT). *See Omagah v. Ashcroft*, 288 F.3d 254 (5<sup>th</sup> Cir. 2002); *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992). In general, an alien who has been convicted of a CIMT is inadmissible to the United States and ineligible for adjustment to permanent residence. *See* 8 U.S.C. § 1182(a)(2)(A)(i)(I). Because of his conviction for a crime involving moral turpitude, the applicant is ineligible for adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(2). Within the provisions of the LIFE Act, Congress has provided no waiver for a CIMT as a ground of inadmissibility.

The record before the AAO also reveals that on February 18, 1992, the applicant was stopped at JFK airport and was charged with attempting to enter the United States without a valid immigrant visa, in violation of 8 U.S.C. § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA). The applicant was ordered to appear for a hearing before an immigration judge on October 20, 1992. The applicant failed to appear for the hearing as scheduled, and the immigration judge ordered that the applicant be excluded from the United States and deported to Pakistan on October 20, 1992. The applicant's motion to reopen filed on April 19, 1994 was denied by the immigration judge in a decision dated July 7, 1994.

In this case, the applicant has both a felony conviction for a CIMT and was ordered excluded and deported from the United States to Pakistan. Both of these events 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 conviction and order of removal from the United States, 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.

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