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U.S. Department of Homeland Security  
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Administrative Appeals Office MS 2090  
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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC 02 229 63398

Office: LOS ANGELES

Date: MAY 22 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:

[REDACTED]

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 district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director also denied the application because the applicant has five misdemeanor convictions in the state of California.

The applicant is represented by counsel on appeal. Counsel asserts that the director failed to consider all of the evidence regarding the applicant's initial entry as required by 8 C.F.R. § 245a.12(f). Counsel does not contest the director's determination regarding the applicant's criminal convictions, but argues that "because USCIS has not denied [the application] for any other reason, he cannot argue against an issue not discussed by USCIS on the decision of June 5, 2007."

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.

Furthermore, 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).

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *rev'd on other grounds, Pickering v. Gonzales*, 465 F.3d 263 (6<sup>th</sup> Cir. 2006); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

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 otherwise admissible to the United States. The documentation that the applicant submits in support of his claim of having arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of photocopies of envelopes postmarked November 10, 1978, May 14, 1979, and December 7, 1980 addressed from the applicant to family members in Mexico. The address on the enveloped postmarked December 7, 1980 corresponds generally with the address listed by the applicant for that time period on an application for temporary residence (Form I-687) also contained in the record before the AAO.

Thus, the AAO concludes that the applicant has established by a preponderance of credible evidence that he initially entered the United States sometime prior to January 1, 1982. We withdraw from that part of the director's decision that states otherwise. However, the AAO notes that the applicant is not otherwise admissible to the United States on account of his multiple misdemeanor convictions, and the application for permanent residence under the LIFE Act must be denied on those grounds.

The record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses in the Municipal Court of Los Angeles, California:

- An November 19, 1992 conviction for one count of violating section 23152(B) of the California Vehicle Code, *Drive a Vehicle with .08% or More Blood Alcohol*. [REDACTED]. The applicant was sentenced to 36 months probation and ordered to serve four days in jail.
- A February 17, 1993 conviction for a violation of section 23152(B) of the California Vehicle Code, *Drive a Vehicle with .08% or More Blood Alcohol*. [REDACTED].
- A July 25, 1994 conviction for one count of violating section of 23152(B) of the California Vehicle Code, *Drive a Vehicle with .08% or More Blood Alcohol*. [REDACTED]. The applicant was sentenced to 5 years probation, 120 days in jail, and ordered to pay monetary fines.
- A November 11, 1991 conviction for one count of violating section of 23152(B) of the California Vehicle Code, *Drive a Vehicle with .08% or More Blood Alcohol*, and one count

of violating section 12500(A) of the California Vehicle Code, Unlicensed Driver. [REDACTED]  
[REDACTED] The applicant was sentenced to four days in jail and ordered to perform 20 days of community service.

- An October 6, 2003 conviction for one count of violating section of 23152(A) of the California Vehicle Code, *Driving Under the Influence*. The applicant was sentenced to 5 years probation and 4 days in jail.
- An August 19, 2002 conviction for one count of violating section 23152(A) of the California Vehicle Code, *Driving under the Influence*. [REDACTED]
- An arrest on December 13, 2005 by the Los Angeles Police Department, Traffic Division, where the applicant was charged with one count of violating section 23152(A) of the California Vehicle Code, *Driving under the Influence* and one count of violating section 23152(B) of the California Vehicle Code, *Drive a Vehicle with .08% or More Blood Alcohol*. The minute record does not contain a final disposition for these charges.

The applicant has more than three misdemeanor convictions. Any three misdemeanor convictions are an automatic disqualification for adjustment to permanent resident status under the provisions of the LIFE Act.

Because of his multiple misdemeanor convictions, the applicant is ineligible for 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.