U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 0 7 2010
MSC 02 243 61123

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.

Perry Rhew
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 denied the application because the applicant failed to demonstrate that she resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant has met her burden of proof by preponderance of the evidence through her applications, oral testimony and extensive documentary evidence. Counsel requested a copy of the Record of Proceedings (ROP) under the Freedom of Information Act (FOIA). Counsel stated that a brief and/or additional evidence would be submitted after receipt of the ROP. The record reflects that the request was completed on June 5, 2009.[1] The record reflects that a brief and additional evidence was received. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[2]

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

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[1] NRC2008019428.

[2] The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

8 C.F.R. § 245a.12(e). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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.12(f). 8 C.F.R. § 245a.2(d)(6).

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 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 petitioner 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 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).

On May 31, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from thirteen individuals claiming to know the applicant. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The declaratons from and are general in nature and state that the declarants have knowledge of the applicant's residence in the United States for a portion of the requisite period. These declarations fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

While the declarations provide some details regarding how they met the applicant, none of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the declarations. None of the declarants testified to personal knowledge of the applicant's continuous residence in the United States throughout the requisite period. In addition, with the exception of none of the declarants stated the applicant's address of residence during the time addressed in the declarations. It is noted that stated an address that is inconsistent with the applicant's Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in the record. The declarants stated that they met the applicant in 1981 and at the time the applicant resided at However, according the applicant's Form I-687, she did not reside at this address until 1985. This inconsistency detracts from the credibility of the declaration. The declarations have little probative value as evidence in support of the applicant's claim.

The declarations from , and state that the declarants have knowledge of the applicant's residence in the United States throughout the requisite period. The declarations provide some details regarding how they met the applicant and general details regarding the nature of their relationship. However, the witness statements fail to provide concrete information which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the declarations. None of the declarants state the applicant's addresses of residence during the requisite period or specific places of employment. The declarations provide limited probative value as evidence in support of the applicant's claim.

The declarations from and state that they have known the applicant for all, or a portion of, the requisite period and that the applicant has continuously resided in United States since the time addressed. None of the declarations provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the

time addressed in the affidavits. The declarations fail to provide minimal probative value as evidence in support of the applicant's claim.

Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. For the reasons noted above, the documents submitted in support of the applicant's claim have been found to be inconsistent or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, court documents in the record reflects that on February 14, 1996, the applicant was arrested and charged with *petty theft* in the Superior Court of California, County of Riverside. The applicant pled guilty and was convicted of *petty theft*, in violation of section 490.5 of the California Penal Code, a misdemeanor . The applicant was sentenced to a fine of $436.00 and summary probation for a period of 24 months. According to an FBI report based upon the applicant's fingerprints, on May 9, 1990, the applicant was arrested and charged with *petty theft* in the Superior Court of California, County of Riverside. The applicant was convicted of *petty theft*, in violation of section 490.5 of the California Penal Code, a misdemeanor (The applicant was sentenced to probation for a period of 24 months.

Theft crimes, even petty ones, are crimes involving moral turpitude (CIMTs). *See United States v. Esparza-Ponce,* 193 F.3d 1133, 1136 (9th Cir.1999) (noting "every other circuit that has addressed the question in the context of the immigration laws has concluded that petty theft is a [CIMT]"); *see also In re Scarpulla,* 15 I. & N. Dec. 139, 140-41 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude.").

Notwithstanding the "petty offense" exception in § 1182(a)(2)(A)(ii) of the Act, an alien who has committed more than one CIMT is inadmissible. See8 U.S.C. § 1182(a)(2)(A)(i). In the absence of court documents, the AAO will not make a finding of inadmissibility.

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