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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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[Redacted]

FILE: [Redacted] MSC-02-249-65634

Office: [Redacted]

Date:

AUG 24 2010

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.

[Redacted]

Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director of the San Jose office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not established that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000.

On appeal, the applicant asserted that he has established his unlawful residence for the requisite period.

On July 12, 2010, the AAO sent the applicant a follow-up communication informing him that additional documentation was required in order to complete the adjudication of his appeal, and requesting that the applicant provide additional evidence. Specifically, the AAO requested that the applicant provide evidence to establish that he continuously resided in the United States in an unlawful status since the date of his entry on June 20, 1981 and throughout the requisite period. The applicant has responded to the AAO's request, submitting additional evidence on appeal.

The AAO has considered the applicant's assertions, 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.¹

The AAO notes that the decision of the director incorrectly states at page one that the application for temporary resident status is denied. The applicant has no pending Form I-687, application for status as a temporary resident. In 1990, the applicant filed an I-687 application to establish his CSS class membership. Therefore, this part of the director's decision will be withdrawn.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (Zambrano). See 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On August 31, 1993 and May 7, 1997, respectively, the director of the San Francisco office issued the applicant a Notice of Intent to Revoke Class Membership (NOIR), on the basis of his September 24, 1990 application for status as a CSS class member. The NOIR was issued based on a legacy Immigration and Naturalization Service (INS) investigation called Operation Catchhold. The notice advised the applicant that he had been identified as procuring his Form I-688A, Employment Authorization Card, through the payment of a bribe to the Salinas Chief Legalization Officer, who was working undercover. The applicant was further advised that Federal Bureau of Investigations (FBI) had identified 22 brokers who paid bribes to the Chief Legalization Officer on behalf of 1,370 applicants and that the brokers had been prosecuted and convicted. The applicant was informed that his application, with bribe payment, was earmarked and segregated and he was issued a Form I-688A in conjunction with the filing of his Form I-687 application. However, the issuance of the employment card was not indicative of the CSS class membership. The applicant was given 15 days and 18 days, respectively, to submit a rebuttal. He did not submit a timely rebuttal.² On June 18, 1997 the director revoked his class membership and employment authorization document.

On the basis of the revocation of the applicant's CSS class membership, the director concluded that he had not established that he had properly obtained class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000, and denied the application for permanent resident status.

An alien who filed a timely application for class membership, as described above, may adjust status under LIFE Legalization if he demonstrates that he is admissible to the United States and that he resided in the United States from prior to January 1, 1982 through May 4, 1988. See 8 C.F.R. § 245a.11.

The director does not contend that the applicant failed to apply for class membership, but rather found that the applicant obtained class membership by fraud. However, 8 C.F.R. § 245a.10 simply specifies that an applicant is eligible for consideration under the LIFE Act if he filed a written claim for class membership. It does not require an applicant to show that he was legitimately granted class membership, or even that he was approved at all.

As stated above, the NOIR's from the director of the San Francisco office refer to the applicant's application for CSS class membership filed on September 24, 1990. These documents, and others in the record, demonstrate that the applicant applied for class membership prior to the statutorily imposed deadline of October 1, 2000. Since the applicant has overcome the sole basis for the director's denial of the application, the director's decision is withdrawn.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he had resided continuously in the United States before January 1, 1982 and continuous

² Your attorney submitted a late rebuttal on October 6, 1993 and June 30, 1997, respectively, in which you denied having procured your Form I-688A by fraud.

residence in the United States in an unlawful status since such date through May 4, 1988. See LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245(a).11(b).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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). 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.2(d)(6).

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 or petition. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and

sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

Further, 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.3(c)(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).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for permanent 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).³

³Additionally, 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

The record reflects that on October 12, 1997, the applicant was arrested for a violation of California Penal Code (PC) section 484 (PC), *theft*, or 488 (PC), *petty theft*. On or about February 11, 1998, the applicant pleaded *nolo contendere in absentia* to the charge, a misdemeanor [REDACTED], case number CAA8476733). The applicant was sentenced to one day in jail and one year of probation. Therefore, for purposes of applying for adjustment to permanent resident status, the applicant stands convicted of one misdemeanor crime of petty theft.

Further, the AAO finds that the applicant's conviction for petty theft is a conviction for a crime involving moral turpitude (CIMT). In general, crimes involving fraud, deceit, and theft are considered to be crimes involving moral turpitude. *See, e.g., Rashtabadi v. INS*, 23 F.3d 1562, 1568 (9th Cir. 1994) (California conviction for grand theft is a CIMT); *McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir. 1980) (per curiam) (conspiracy to affect the market price of stock by deceit with intent to defraud is a CIMT); *Winestock v. INS*, 576 F.2d 234, 235 (9th Cir. 1978) (dealing in counterfeit obligations is a CIMT); *see also United States v. Esparza-Ponce*, 193 F.3d 1133, 1136-37 (9th Cir. 1999) (stating in illegal reentry case that petty theft constitutes a CIMT); *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1017-20 (9th Cir. 2005) (burglary convictions under Wash. Rev. Code §§ 9A.52.025(1) and 9A.08.020(3) do not categorically meet the definition of CIMT, but do meet the definition under the modified categorical approach because petitioner intended to steal property, a fraud crime); *see also Flores Juarez v. Mukasey*, 530 F.3d 1020, 1022 (9th Cir. 2008) (per curiam) ("Petty theft is a crime involving moral turpitude under 8 U.S.C. § 1229b(b)(1)(B).")

Moreover, as noted *supra*, an applicant who has been convicted of a CIMT is inadmissible, and therefore ineligible for permanent resident status. However, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception, which requires that the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year, and that the alien was not sentenced to a term of imprisonment in excess of 6 months. 8 U.S.C. § 1182(a)(2)(A)(ii). The AAO finds that the applicant's misdemeanor conviction qualifies for the petty offense exception, since the maximum possible penalty for a misdemeanor in California is six months. *See California Penal Code, Section 19*. In addition, the applicant was not sentenced to a term of imprisonment in excess of six months, but was sentenced to one day in jail and placed on probation. Therefore, the applicant's misdemeanor conviction does not constitute an additional basis for denial of this application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date and through May 4, 1988. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of

crime) more than 5 years before the date of application for a visa or other 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 he is eligible for the youthful offender exception and we note that the crime was not committed when the applicant was under 18 years of age.

witness statements. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements in this decision. 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 record contains witness statements from [REDACTED]

[REDACTED] The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting in the United States with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The applicant has also submitted a witness statement from [REDACTED]

[REDACTED] of the temple from August 1981 for the duration of the requisite period. However, the applicant failed to list his membership in the temple or any other religious organization on the I-687 application. At part 34 of the application, where applicants are asked to list their involvement with any religious organizations, the applicant did not list any organizations. This contradiction undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

More importantly, the witness statement does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has

letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. This attestation fails to comply with the cited regulation. Therefore, this attestation is of little probative value.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, and a Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership.

At the time of his interviews on February 11, 2009 and January 23, 2003, the applicant stated that he first came to the United States on April 16, 1981. In the I-687 application and in a class member worksheet filed with that application, the applicant stated that his only absence from the United States during the requisite period was from July 17, 1987 to August 23, 1987.

However, at an interview on August 31, 1993, the applicant stated that he first entered the United States in September 1981, and that he has never left the United States since the date of his entry. In addition, the applicant stated that he was not familiar with the witness Sohan Singh, and that he did not know anyone by that name. Sohan Singh stated that he was the applicant's neighbor for some part of 1987.

On appeal, the applicant denies having stated that he has never left the United States since the date of his entry, or that he first entered the United States in September 1981. In addition, the applicant states that when asked about Sohan Singh at the time of his interview, the applicant did not recognize his name because, "I was really nervous and I was having trouble remembering details."

The inconsistencies in the applicant's testimony regarding the dates he first entered the United States, whether he was absent from the United States during the requisite period, and his ability to identify a witness who claims to have been his neighbor during a portion of the requisite period, are material to his claim, in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Therefore, based upon the foregoing, the applicant has failed to establish continuous residence in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

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