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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]

Office:

[REDACTED]

Date:

JUL 07 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]

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

The director denied the application on three separate grounds. First, the director found that the applicant is ineligible for adjustment to permanent resident status under the LIFE Act because he had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite time period. Second, the director found that the applicant had not established his eligibility because he was charged on two separate occasions with crimes; he submitted conviction documents for one of the crimes, and failed to submit the final court disposition for the other crime. 8 C.F.R. § 245a.3(c)(1). Finally, the applicant is not eligible for benefits under the LIFE Act because he failed to demonstrate basic citizenship skills. 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

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 “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

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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 applicant 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. 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).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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).

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).

The record contains court documents from the Circuit Court of Cook County, Illinois, which indicate that on December 8, 1998, the applicant was convicted of violating 720 ILCS 5/11-14.1, *solicitation of a sexual act*, a misdemeanor, in Case no. 98401412001.

The AAO has reviewed the record and concludes that the applicant's conviction for *solicitation of a sexual act* constitutes a crime involving mortal turpitude (CIMT), which may render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and therefore ineligible for permanent resident status.

Moral turpitude refers generally to conduct that is inherently base, vile or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999). Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude. *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 61 5, 61 7-1 8 (BIA 1992), that:

Moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The crime of solicitation of prostitution is a CIMT. *Matter of Lambert*, 11 I. & N. Dec. 340 (BIA 1965).

The AAO finds that solicitation of prostitution is an inherently base act and that the applicant's conviction for solicitation, is for a crime involving mortal turpitude (CIMT). *Matter of Lambert*.

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).

Thus, the next issue becomes the applicant's failure to submit a final court disposition for a second charge of solicitation. Specifically, on August 5, 1999, the applicant was arrested and charged in Maywood, Illinois for violating 720 ILCS 5/11-14.1, *solicitation of a sexual act*, a misdemeanor, in Case no. 99-18,540-1, Circuit Court of Cook County, Illinois. In response to a Request for Evidence (RFE) dated May 13, 2003, the applicant submitted only a copy of the criminal complaint. He failed to submit the final disposition of the case. Therefore, the AAO finds that the applicant has not established his admissibility. As he may stand convicted of two CIMTs, he has not proven his eligibility for the petty offense exception.

The applicant's CIMT conviction constitutes grounds for denial of this application because it renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), and, therefore, ineligible for adjustment to permanent resident status. There is no waiver available to an alien who has been convicted of a CIMT.

Further, the applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite statutory period. A second issue in this proceeding is whether the applicant has established that he (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 his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. 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 applicant has submitted 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 statements must do more than simply state that a witness 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 with the applicant in the United States or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses 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 record contains employment verification letters from Welding Company of America and Expert Body and Render Work which state that the applicant was employed during the relevant period.

The employment verification letters do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties or the number of hours or days he was employed. Furthermore, the witnesses do not state how they were able to date the applicant's employment. For these reasons, the employment verification letter is of little probative value.

The record also contains a letter from [REDACTED] indicating that the applicant's sister has testified to the church that she and the applicant attended services there during the relevant period. The church does not confirm this, except to indicate that the priest who was at the church during the relevant period is no longer there. This letter is not probative.

The applicant has submitted copies of federal tax returns for the years 1986, 1987 along with bank statements and pay check stubs from 1987. These items are evidence of the applicant's residence in the United States beginning in 1986 or 1987.

However, 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 and employment 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.

Finally, the applicant is not eligible for benefits under the LIFE Act because he has not established that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. The applicant was interviewed on May 13, 2003 and December 16, 2003. On both occasions, the applicant failed to demonstrate his minimal understanding of the English language and knowledge and understanding of the history and government of the United States pursuant to section 1104(c)(2)(E)(i) of the LIFE Act.

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. In addition, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act on the basis of a conviction for a CIMT.² Finally, the applicant has not demonstrated his basic citizenship skills pursuant to section 1104(c)(2)(E)(i) of the LIFE Act. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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

² As noted in the decision, the applicant has not established that he is eligible for the petty offense exception.