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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

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[REDACTED]

FILE:

[REDACTED]

Office: TUSCON

Date:

SEP 29 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.

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

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act. The director found that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Naturalization Act, 8 U.S.C. 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude (CIMT). Specifically, the applicant pled guilty on August 22, 2002, in the Superior Court of Arizona, Pima County, Tucson, Arizona, for Theft, a Class 6 offense, in violation of Arizona Revised Statute 13-1802 (Docket # [REDACTED]). Theft is a crime involving moral turpitude (CIMT). *Matter of D*, 1 I&N Dec. 143 (BSA 1941). Thus, the director noted that the applicant has been convicted of a CIMT and is inadmissible pursuant to section 212(a)(2)(i)(1) of the Act, 8 U.S.C. § 1182(a)(Z)(A)(i)(I).

On appeal, the applicant asserts that her conviction is subject to the petty offense exception under Section 212(a)(2)(A)(ii) of the Act. She submits a copy of an order terminating probation and designating her theft offense as a misdemeanor. She notes that her conviction did not carry a possible sentence exceeding imprisonment for one year and that she was not sentenced to a term of imprisonment exceeding six months.

An alien is inadmissible to the United States if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. *See* Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act.

However, an alien is not inadmissible if the maximum penalty possible for the crime of which the alien as convicted did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed.) *See* section 212(a)(2)(A)(ii)(II) of the Act.

Records indicate that the applicant was given an undesignated probationary sentence. After she successfully completed her probationary sentence, the judge determined that the undesignated offense to which she had pled guilty should be designated as a misdemeanor. The maximum possible punishment for a misdemeanor under Arizona law is six months. *See* Ariz.Rev.Stat. § 13-707. Because the maximum penalty for a misdemeanor is less than one year, the conviction clearly falls into the petty offense exception.

As the exception contained at section 212(a)(2)(A)(ii)(II) of the Act specifically applies, the applicant cannot be considered to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, despite the fact that she has been convicted of a crime involving moral turpitude. Therefore, the applicant has overcome this particular basis of the denial.

at 8 C.F.R. § 245a.2(d)(3)(v). The declarant fails to indicate the applicant's address or her duties during the relevant period.

- An ESL certificate indicating that the applicant was enrolled in an ESL program at Alhambra School District from November 1986 until March 1987.
- Affidavits from [REDACTED] [REDACTED] The affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with her, or how they had personal knowledge of her presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period.
- A copy of an auto insurance policy premium invoice dated April 1986. The invoice indicates that the applicant's address is [REDACTED]. The applicant does not list this address on her Form I-687 dated March 2001. She indicates that she lived in Azusa, California until October 1986. Thus, this invoice will be given no probative weight.
- A copy of a 1987 tax document indicating that the applicant earned taxable miscellaneous income in 1987. The form lists the applicant's address as [REDACTED]. The applicant indicates on her Form I-687 that she lived in El Monte, California from October 1986 until December 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the applicant has not presented independent objective evidence that resolves the noted inconsistencies.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 throughout the relevant period as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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