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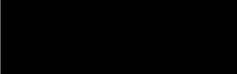
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 165 63025

Office: LOS ANGELES

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AUG 14 2006

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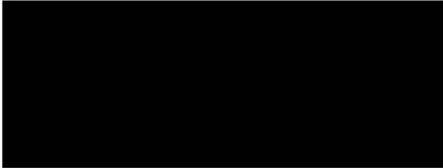
Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant's testimony was at variance with the information initially provided on his Form I-687 application, thereby casting credibility issues on his claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As such, the director denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides a statement from the applicant and copies of previously submitted documents in support of the appeal.

It is noted that the director, in denying the application, did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on appeal.

An applicant for permanent resident status 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 and through May 4, 1988. 8 C.F.R. § 245a.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.

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 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 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An affidavit notarized December 9, 1992 from [REDACTED] of Culver City, California, who indicated that the applicant was in his employ as a tree cutter from November 1982 to May 1984.
- An affidavit notarized December 9, 1992 from [REDACTED] of Culver City, California, who indicated that the applicant was in his employ as a tree cutter from June 1984 to March 1986.
- An affidavit December 9, 1992 from [REDACTED] of Los Angeles, California, who indicated that the applicant was in his employ as a tree cutter from April 1986 to June 1989.
- A PS Form 3806, receipt for registered mail postmarked July 20, 1984. The receipt listed the applicant's address as [REDACTED] Los Angeles.
- An envelope postmarked March 10, 1986, which listed the applicant's address as [REDACTED] Culver City.
- A money order receipt dated March 17, 1986, which listed the applicant's address as 640 S. Serrano Avenue, Los Angeles.

The applicant also submitted a letter in the Spanish language from [REDACTED] and [REDACTED]. As said letter was not accompanied with a required English translation, it cannot be considered. 8 C.F.R. 103.2(b)(3).

The director determined that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through May 4, 1988. The director, in a Notice of Intent to Deny issued on June 9, 2004, informing the applicant that there were inconsistencies between his testimony, and Form I-687 application. Specifically, at the time of his interview, the applicant stated in a sworn statement that upon his arrival into the United States in September 1981, he resided with [REDACTED] in Culver City for three years. The applicant further stated that he was employed by [REDACTED] in gardening during this time period. However, on his Form I-687 application, the applicant indicated that he resided in Los Angeles from September 1981 to June 1983 at [REDACTED]. The applicant did not claim any residence in Culver City until June 1988. The director further informed the applicant that the record contained no evidence from [REDACTED] to corroborate his claim of residence and employment.

Here, the submitted evidence is not relevant, probative, and credible. The applicant, in response, submitted:

- A letter in the Spanish language with English translation dated July 2, 2004 from [REDACTED] of Calvillio, Aguascalientes, Mexico. [REDACTED] asserted that the applicant resided with him in September 1981 at [REDACTED] Culver City, and that he always tried to help the applicant and teach him to work in things that he did not know.
- An affidavit from [REDACTED] of Culver City, California, who indicated that she has known the applicant since September 1981. [REDACTED] asserted that the applicant applied for a job at her house [REDACTED] and was subsequently employed by her father, [REDACTED] who owned a landscaping business. [REDACTED] stated that she and the applicant

courted from October 1981 through October 1983 and continued to maintain a friendship after the relationship ended. [REDACTED] stated in 1997 the applicant moved out of the neighborhood.

- A letter dated July 9, 2004 from Father [REDACTED], former pastor at St. Gerard Majella Church in Los Angeles, California, who indicated that he was an associate priest at the church from September 1975 to July 1992. [REDACTED] asserted that the applicant arrived at the parish in 1981 and would frequently visit and serve the church.

On appeal, the applicant states he arrived in the United States in September 1981 and resided for many years in Culver City with [REDACTED] at [REDACTED]. The applicant asserts, in part.

Although I would often move out of the house for short periods of time, I always kept the Culver City address as my mailing address. I always used it as a mailing address because I would always come back to that address after short periods of living outside the apartment. I moved out of the Culver City address permanently in 1997.

As to my employment history, when I first entered the United States, I worked as a gardener for several different people. First of all, I worked for [REDACTED]. He would send me to various places to work in gardens/yards. I worked for [REDACTED] from September 1981 to the present time. Now, I only work for [REDACTED] every once in a long while.

In addition to my work for [REDACTED] I also worked for [REDACTED] twice a week beginning in approximately September of 1981.

I worked for [REDACTED]

Although my I-687 application states that I did not live in Culver City until June of 1988, that is incorrect. I went to a notary to prepare my application and the application was poorly prepared. I do not read or write in English or in Spanish. Therefore, I could not verify the accuracy of the information contained in the application. An interpreter did not go over the application with me. Rather, I was simply told to sign in the appropriate place on the application.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, the letter from [REDACTED] does not corroborate the applicant's statements made at the time of his interview and on appeal. [REDACTED] only attests to the applicant residing with him in September 1981. As such, [REDACTED] affidavit has little probative value or evidentiary weight.

[REDACTED] assertion that the applicant was employed by her father, [REDACTED] contradicts the applicant's Form I-687 application. The applicant neither claimed on his Form I-687 application employment with [REDACTED] nor submitted any documentation supporting this assertion. As such, [REDACTED] assertion raises questions about the authenticity of her affidavit.

The applicant, in affixing his signature on item 46 of his Form I-687 application, certified that the information he provided was *true* and *correct*. Said application does not indicate that anyone other than the applicant completed the application as no information is listed in items 48 and 50 of the application; items 48 and 50 of the application requests the name, address and signature of the person preparing the form. As conflicting statements have been provided, it is reasonable to expect an explanation from the preparer in order to resolve

the discrepancy. However, to date, no statement from the alleged preparer or the preparer's name has been submitted to corroborate the applicant's statement. Consequently, the applicant's assertion that the application was prepared by someone other than himself cannot be considered as persuasive.

In addition, the PS Form 3806 postmarked in 1984 and the money order receipt dated March 17, 1986 contradicts the applicant's claim that he "always kept the Culver City address as my mailing address." The applicant's Form G-325A, Biographic Information signed and dated February 27, 2003 contradicts the applicant's claim that he resided with [REDACTED] from September 1991 until 1997. On the Form G-325A, the applicant listed his residence at [REDACTED] from 1985 to September 1997. As previously noted, the applicant neither claimed on his Form I-687 application employment with [REDACTED] nor submitted any documentation supporting this assertion.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record reflects that on November 11, 1986, the applicant was arrested by the Los Angeles Police Department for gambling. According to the FBI printout, the applicant was placed on diversion. While this offense does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the record contains no evidence indicating the applicant successfully completed the diversion program.

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