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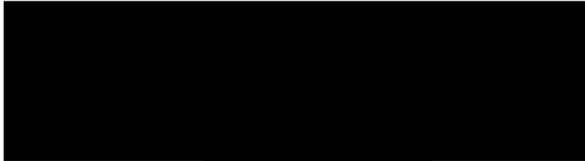
U.S. Department of Homeland Security  
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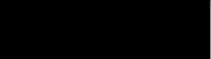
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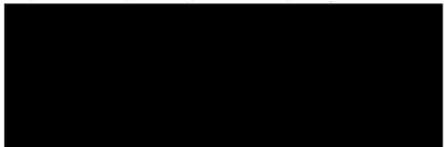
Applicant:



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 denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserted 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 stated that many years have transpired and, therefore, dates and events may be difficult to recall with exact precision. Counsel provided copies of previously submitted documents in support of the appeal. Counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. To date, however, no additional correspondence has been presented by either counsel or the applicant.

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).

Here, the submitted evidence is not relevant, probative, and credible. 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:

- A California identification card (ID) issued on May 19, 1987, which listed the applicant's address as [REDACTED]
- A receipt dated July 13, 1987 from Thrifty, which listed the applicant's Los Angeles address as [REDACTED]
- A receipt dated May 9, 1987 from Shannon's Electronics in Los Angeles, California.
- A Western Union mailgram dated July 3, 1987, which listed the applicant's Los Angeles address as 8008 Sunset Blvd.
- Four pay stubs issued during November 1986 from Citrus Harvesting Co., in Yuma, Arizona.
- A photocopied Baptismal Certificate dated October 18, 1987 from the Angelus Temple in Los Angeles, California.
- An affidavit notarized March 22, 1990 from [REDACTED] of Los Angeles, California, who attested to the applicant's residence in Los Angeles since January 1982. [REDACTED] asserted that the applicant worked at his store.
- An affidavit notarized May 30, 1990 from [REDACTED] of Los Angeles, California, who attested to the applicant's residence in Los Angeles since December 1981. [REDACTED] asserted that the applicant resided at her home.
- An additional affidavit notarized January 29, 1991 from [REDACTED] who indicated that she has known the applicant since December 1981 and that she and the applicant worked at the same employment until 1987.
- A letter notarized February 11, 1991 from [REDACTED] owner of [REDACTED] in Los Angeles, California, who indicated that the applicant was in her employ from January 1982 to December 1988.
- Several rent receipts dated December 1, 1981 and during 1982, 1983 and 1984 from [REDACTED] for property at [REDACTED]

The applicant also submitted several Western Union money order receipts, photographs, envelopes and receipts as evidence to establish his residence in the United States during the requisite period. The receipts, however, failed to list either a date and/or his name, and, therefore, they have no probative value or evidentiary weight. The photographs have no identifying evidence that could be extracted which would serve to either prove or imply that photographs were taken in the United States and during the requisite period. The envelopes contain indecipherable postmarked dates and, therefore, the AAO cannot conclude that they were mailed during the requisite period.

On February 13, 2003, the director issued a Form I-72, advising the applicant to submit evidence of his continuous presence in the United States from 1981 through 1985 and 1988. The applicant, in response submitted:

- An additional letter dated March 1, 2003 from [REDACTED] who indicated that the applicant resided at her home from January 1982 through 1990 at [REDACTED] California. [REDACTED] asserted that the applicant assisted in her flower shop, Alfie's Flowers.
- His original Baptismal Certificate dated October 18, 1987 from the Angelus Temple in Los Angeles, California.
- A Form H-6 from the California Department of Motor Vehicles dated March 4, 2003, which reflected his addresses subsequent to the requisite period.
- Documentation from the Fairfax Community Adult School indicating that the applicant was enrolled in English as a Second Language classes from 1988 through 1991.
- An additional affidavit notarized March 1, 2003 from [REDACTED], who indicated that she first met the applicant in November 1981, and that the applicant resided in her home at [REDACTED] [REDACTED] during December 1981. [REDACTED] asserted that she obtained a job in maintenance for the applicant at a flower shop and introduced him to her former employer, [REDACTED]. [REDACTED] asserted, "I worked with Jose at the flower shop from January 1982 through 1990." [REDACTED] indicated that the applicant resided in [REDACTED] home from January 1982.

The director issued a Notice of Intent to Deny dated June 18, 2004, informing the applicant that the submitted evidence did not establish his continuous unlawful residence in the United States. In addition, the applicant was informed that there were inconsistencies between his documents and testimony. Specifically, at the time of his interview, the applicant stated in a signed statement that upon his entry into the United States on November 29 or 30, 1981, he resided with [REDACTED] until January 1982, and then resided with [REDACTED] from January 1982 to 1990. The applicant, however, presented a rent receipt dated December 1, 1981 from [REDACTED] for the period December 1, 1981 to January 1982. The applicant also stated that he paid [REDACTED] approximately \$400.00 a year for residing in her home. The applicant provided rent receipts, issued in 1982 (for \$150.00), 1983 (for \$150.00) and 1984 (for \$120.00), which reflected monthly rent payments. Regarding his employment, the director informed the applicant that [REDACTED] attested to the applicant's employment from January 1982 to December 1988; however, [REDACTED] indicated that the applicant was employed with [REDACTED] from 1982 to 1990.

Counsel, in response, asserted in part:

[REDACTED] worked as a florist in a shop owned by [REDACTED]. In December of that year (1981), [REDACTED] [sic] referred [the applicant] to [REDACTED] for employment in the flower shop.

[The applicant] was hired in mid December by the flower shop. He worked in the shop and was trained in floral design by the owner. With the wages earned [the applicant] paid rent to [REDACTED] the month of December that year.

In January 1982 [the applicant] moved to [REDACTED] home. In December 1981 [the applicant] paid \$120.00 as rent deposit and so on successively.

In 1986 [the applicant] found a temporary weekend job. He was hired by [redacted] manager of Citrus Harvesting Co. He would be collecting lemons and oranges in Yuma, California. ...Meanwhile he continued working at the flower shop with [redacted]

We do not believe there any contradictions in the testimony given at the interview on February 13, 2003. However, it could be possible that the written testimonies given by [redacted] and [redacted] not be very precise and might suggest incongruences in the dates presented. We ask that you consider the following.

Testimony was initially requested 14 years ago. The Immigration Service required information pertaining to the year 1988 in order for the application to qualify. [redacted] testifies to working with [the applicant] till 1987 but does not clarify her leave from the flowers shop. When she returns to the flowers shop in February 1990, [the applicant] continued to work there till July of the same year. This explains why she states that she worked with him till 1990 in the last affidavit.

Officially, [redacted] does not consider [the applicant] as an employee in December 1981 because she was not sure [the applicant] would be able to perform his job duties.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from either [redacted] or [redacted] has been submitted to corroborate counsel's assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel's assertion that the applicant's employment at Citrus Harvesting Co., occurred in "Yuma, California" is incorrect as the pay stubs clearly reflect "Yuma, Arizona" as the location of [redacted]. It is unclear why the applicant failed to claim this employment on his Form I-687 application. Nevertheless, as the applicant received wages for 38 hours of work that occurred for one month only, any possible discrepancy regarding his failure to mention said employment on his Form I-687 application can be deemed to be minor and not prejudicial to the applicant's claim

The record contains additional contradicting information for which no plausible explanation has been provided. Specifically, counsel and the affiants all claimed that the applicant was residing with [redacted] from 1982 to 1990 at [redacted] dated November 3, 1989 and his ID card from the Department of Motor Vehicles along with the receipts from Thrifty and Western Union in 1987 list the applicant's address as [redacted]. In addition, the applicant indicated on his Form G-325A, Biographic Information employment with Alfie's Flowers since January 1992 and his residence at 6310 Lindenhurst Avenue from March 1992 to June 1998..

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 numerous 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 she 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.

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