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FILE: [Redacted]

Office: LOS ANGELES

Date: **MAY 04 2006**

MSC 02 018 61620

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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, based on his sworn testimony at the time of his interview. Accordingly, the district director denied the application.

On appeal, counsel argues that the director failed to consider the applicant's explanation surrounding his sworn statement along with all the evidence submitted throughout the application process.

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).

At the time of his initial interview on February 6, 1992, the applicant admitted, under oath, in a signed sworn statement, that his first entry into the United States was in 1988. The applicant further admitted, "I paid \$2,500.00 to a certain legal assistance for the preparation of my application for amnesty thru LULAC and other documents."

According to the interviewing officer's notes, the applicant asserted that his daughter in the Philippines purchased the documentation presented with his LIFE application and mailed it to him. The applicant asserted

that he did not know how much his daughter paid for the documentation, but admitted he paid \$2,500.00 to an unknown Filipino for the rest of the documents and application.

According to the interviewing officer's notes taken at the time of the applicant's LIFE interview on November 4, 2002, the applicant asserted that his first entered the United States in 1981. The applicant asserted that from 1981 to 1989, he helped a friend, [REDACTED] sell items at a swap meet and, in turn, she provided him with room and board at her residence. The applicant asserted that since he did not have to pay for anything, he did not have any documentation to establish his residence during the requisite period.

In a signed sworn statement dated November 4, 2002, the applicant claimed the following:

That I was forced to signed my previous statement that my first entry here in the United States was in 1988 instead of 1981, because the lady who assisted me or helped me, told me that if I don't sign the said statement she instructed me to write, she will have me arrested. Because of fear, I was really forced to write and signed the statement. Although I was hesitant because it was not true. The words or statement was dictated to me, against my will.

The applicant's Philippine passport, which reflects he entered the United States with a B-2 visitor's visa on March 20, 1985, coupled with documentation from the United States Army indicating the applicant attended several courses in the United States prior to 1981, supports the applicant's claim to have entered the United States prior to 1988. As such the applicant's initial sworn statement of February 6, 1992 has no probative value in this matter.

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

- Envelopes postmarked on January 4, 1982, in 1983 and 1987 addressed to the applicant at [REDACTED] Los Angeles, California.
- Envelopes postmarked on April 8, 1986, December 1987 and January 1988 addressed to the applicant at [REDACTED] Los Angeles, California.
- A postcard postmarked April 2, 1987 addressed to the applicant at [REDACTED] Los Angeles, California.
- An indecipherable postmarked postcard addressed to the applicant at [REDACTED] Los Angeles, California.
- An affidavit notarized August 8, 1989 from [REDACTED] of Los Angeles, California who attested to the applicant's residence at [REDACTED] Los Angeles, California since April 1981 [REDACTED] asserted that he was a co-worker of the applicant at a swap meet.

In a Notice of Intent to Deny issued on June 10, 2004, the director informed the applicant that the documentation submitted was insufficient to establish continuous unlawful residence in the United States during the requisite period. The director also informed the applicant that based on his sworn statement in which he indicated that his first entry into the United States was in 1988, the documentation submitted in support of his LIFE application was vague and lacked corroborating evidence.

Counsel, in response, argued that the director's notice was anchored solely and primarily on the applicant's sworn statement. Counsel asserted that this statement was obtained under circumstances indicating duress by an INS officer who might have overstepped the bounds of zealotry in the discharge of official duty by forcing the undocumented applicant to execute, sign and swear to the truthfulness of the alleged statement which the INS officer herself had prepared. Counsel asserted that this statement was rebutted in a statement dated October 9, 2001 and submitted by applicant. A thorough review of the record, however, does not indicate that said statement was received by Citizenship and Immigration Services prior to the Notice of Intent to Deny. Counsel, however, submitted the applicant's original statement in which the applicant stated in part:

When I filed an application for amnesty through LULAC, the only supporting documents I was able to gather were the letter envelopes my daughter had been sending me since 1981 as we communicated with each other. Prior to filing an amnesty, a person who claimed he could help me with my immigration papers have run away with my important documents, including my passport. The reason I failed to come up with the money the man (paralegal) had asked me to produce. I was left with nothing.

When I tried to renew my temporary work permit (I-688) the INS officer instead of renewing my work permit, subjected me to some kind of interrogation. He asked about my passport, any proof of my existence here in America and the date when I first came to the US. I told him I came here in 1981. I also said I have entrusted all my papers to a man who fooled me and that I had nothing left to show him except the letter envelopes. He did not believe me. He insinuated the envelopes were just mailed to me by my daughter and were not the result of our constant letter writing. I denied the insinuation and accusation but the INS officer insisted that I sign instead an admission stating that my daughter had purchased the envelopes I used as supporting documents; that I entered the country in 1988 and not in 1981. The officer threatened to arrest me if I would not make the admission and would not sign it as well.

* * *

For a start, I stayed with a friend in San Jose, California. I hid from authorities, worked illegally in swap meet, allowed myself to be exploited, and had avoided maintaining any records that would disclose my illegal presence in the US. I was always paid in cash. Then in 1988, I moved here in Los Angeles, got a job, and have resided here until now.

Counsel submitted copies of documents that were previously presented along with the following:

- An affidavit from [REDACTED] of Los Angeles, California who indicated that in 1981, by chance, he met the applicant at a Denny's Restaurant on Vermont Avenue in Los Angeles. [REDACTED] asserted that sometime later the applicant went to work in San Jose, then returned to Los Angeles, but was unable to find any employment and therefore returned to San Jose.
- A gift certificate dated November 18, 1982 in the applicant's name.
- Two envelopes postmarked June 9, 1981 and December 15, 1983 addressed to the applicant at Los Angeles, California.

Here, the submitted evidence is not relevant, probative, and credible. The applicant has put forth contradicting information for which no explanation has been provided and, therefore, has undermined his credibility. Specifically:

- In his statement dated October 9, 2001, the applicant claimed that he stayed with a friend in San Jose, and in 1988, moved to Los Angeles. The applicant, however, did not claim any residence in San Jose on his Form I-687 application.
- As previously noted, the applicant informed the interviewing officer at the time at his LIFE interview that from 1981 to 1989 he helped [REDACTED] in selling items at a swap meet and, in turn, she provided him with room and board. The applicant, however, claimed on his Form I-687 application that his employment at the swap meet ended in 1985. No evidence from [REDACTED] has been provided to corroborate his claim of employment and residence.
- The applicant, on his Form I-687 application, did not claim the addresses [REDACTED] and [REDACTED] as residences.

The AAO does not view the two affidavits from [REDACTED] and [REDACTED] discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period. [REDACTED] stated that he has known the applicant since 1981, but provided no details as to the nature of their interaction in subsequent years or the applicant's address. [REDACTED] attested to the applicant's residence at an address that has raised questions of credibility. The gift certificate only serves to establish the applicant's presence in the United States on November 18, 1982; it does not imply or affirm continuous residence.

It is not unusual to receive mail at a different location than where one is residing. However, the fact that the applicant provided no evidence, such as affidavits from affiants who resided at these residences and could attest to the fact that the applicant was receiving his mail at these locations, tends to negate any credibility of the applicant's claim of *continuous* residence in the United States. It is noted that in his statement dated October 9, 2001, the applicant indicated that after the completion of several courses with the United States Army, he went home to the Philippines, "but having been attracted to the country, I would come back again and again, took my vacation here, using my military passport for entry...." As such, the addresses in question may have been the locations the applicant was staying during his visits to the United States and, therefore, would only establish his *presence* during the timeframe of his visits.

A review of the postal stamps on the envelope postmarked January 4, 1982, along with one of the postal stamps on the envelope postmarked April 8, 1986, and two of the postal stamps on the envelope postmarked January 13, 1988 reveals they were not issued by the government of the Philippines until at a later date.¹ This further undermines the applicant's credibility.

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

¹ See <http://www.geocities.com/abda/80/82/index.html>, <http://www.geocities.com/abda/80/86/index.html>, and <http://www.geocities.com/abda/80/88/index.html>.

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.