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U.S. Citizenship
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FILE:

MSC 02 138 61033

Office: LOS ANGELES

Date:

APR 19 2007

IN RE:

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:

Self-represented

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.

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:

- An affidavit notarized March 6, 1990 from [REDACTED] of Santa Ana, California, who attested to the applicant's residence in the United States since April 1981. [REDACTED] asserted that he and the applicant stayed in the same boarding house when the applicant arrived in the United States in 1981. [REDACTED] listed the applicant's residences from April 1981 to June 1984 at [REDACTED], Santa Ana; from June 1984 to November 1986 at [REDACTED], Mission Viejo; and from November 1986 at [REDACTED] Tustin.

- A California driver license with an indecipherable issue date.

On June 25, 2003, the director issued a Form I-72, requesting that the applicant submit a social security earnings printout as well as employment verification documentation. The applicant, in response, submitted:

- A letter notarized July 3, 2003 from [REDACTED] of San Rafael, California, who indicated that the applicant was employed from 1986 to 1987 as a housekeeper on a weekly basis by her parents.
- A social security printout dated June 25, 2003 from the Social Security Administration in Laguna Niguel, California, which reflected the applicant's earnings since 1988.
- A letter notarized July 1, 2003 from [REDACTED] of Valley Village, California, who indicated that the applicant resided at her apartment from 1981 to 1982 at [REDACTED] Santa Monica.

It is noted that at the time of his LIFE interview, the applicant under oath, admitted in a signed statement that in 1981 to 1982, he resided at [REDACTED] Santa Monica, California for approximately three weeks. According to the interviewing officer's notes, the applicant asserted that he resided with [REDACTED] for only three weeks in December 1981 to January 1982.

On November 9, 2004, the director issued a Notice of Intent to Deny, advising the applicant that the affidavits submitted lacked probative value and they did not contain sufficient information and corroborative documents. The applicant was also advised that at the time of his LIFE interview, he indicated that he had not departed the United States from 1981 to 1988. However, he indicated on his Form I-687 application that he departed the United States in March 1988 to attend a funeral. The director noted that this testimony raised questions of credibility regarding his claim of residence in the United States during the requisite period. The applicant, however, failed to respond to the notice.

On appeal, the applicant asserts, in part:

In 1987 I departed the United States to the Philippines to bring my wife [REDACTED] to the United States. We got the visa to travel to the United States. I came back here as a tourist January 1988. I had a California Driver License No. [REDACTED] Your findings that I departed the United States March 1988 to attend a funeral is [sic] wrong. The second time I left the United States was in 1992.

The record, however, reflects that the applicant indicated at item 35 on his Form I-687 application that he departed the United States in March 1988 to the Philippines to attend his mother's funeral.

The applicant's statement has been considered; however, the AAO finds it lacking in credibility. The applicant asserts that he returned to the United States with a non-immigrant visa, but he did not indicate at items 24 through 28 on his Form I-687 application that he had been admitted as a non-immigrant. The applicant neither provides an explanation why his 1987 departure was not claimed on his Form I-687 application nor provides evidence to establish his 1987 entry with a non-immigrant visa. The instructions to the application instruct the applicant to list all absences from the United States since entry. 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*. The fact that the applicant failed to disclose his 1987 departure, is a strong indication that the applicant may have been outside the United States beyond the period of time allowed by regulation.

The applicant claimed that he has been in the United States since April 1981, but only provides affidavits from three affiants. The applicant has not provided evidence such as a lease agreement, rent receipts, or utility bills to corroborate his claim of residence during the requisite period. The inability to produce contemporaneous documentation of residence raises questions regarding the credibility of the claim. The applicant claimed on his Form I-687 application that he has been employed since April 1981; however, no evidence from these alleged employers was provided to corroborate his claim

It is noted that the applicant claimed on his Form I-687 application to have been employed at [REDACTED] in Mission Viejo from July 1984 to November 1986. However, the applicant indicated on his Form G-325A, Biographic Information that this employment commenced in 1988.

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 absence of any contemporaneous documentation, along with the applicant's reliance on minimum documentation, it is concluded that he has failed to establish continuous residence and physical presence in the United States for the requisite period. Therefore, 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.