



U.S. Citizenship
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[Redacted]

FILE: [Redacted] MSC 01 345 61841

Office: LOS ANGELES

Date: APR 26 2007

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. 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, and is now before the Administrative Appeals Office 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, the applicant submits additional evidence and requests that his case be reconsidered.

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 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 sufficiently 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:

- An affidavit notarized on January 3, 2005 from [REDACTED] of Los Angeles, California attesting, as a friend and relative by marriage, to the applicant's addresses in the United States since 1981.
- An affidavit notarized on December 30, 2004 from [REDACTED] of Orange, California stating the knows the applicant has resided in the United States since 1981 because the applicant is his nephew and lived at his home for two years from 1981 to 1983.
- An affidavit notarized on December 28, 2004 from [REDACTED] of Corona, California, stating that he has knowledge that the applicant has resided in the United States since 1982 because the applicant is his brother and they have lived together several times.
- An affidavit notarized on May 22, 2003 from [REDACTED] of Los Angeles, California stating that he is the cousin of the applicant's wife and knows that the applicant has resided in the United States since 1980.
- An affidavit notarized on April 30, 2003 from [REDACTED] of Riverside, California stating that he has known the applicant has been living in the United States since they met and became friends in May 1984.
- An affidavit notarized on December 2, 2002 from [REDACTED] of Los Angeles, California attesting, as a friend and relative by marriage, to the applicant's addresses in the United States since 1981.
- A letter dated March 31, 1989, with copy of W-2 Forms and payroll ledger attached, from [REDACTED], "Bookkeeper" of Roll Right Industries, stating that the applicant worked for [REDACTED], Inc., under Social Security number [REDACTED] from July 19, 1983 to January 3, 1984.
- A letter dated March 29, 1989 from [REDACTED] Controller of [REDACTED] Manufacturing, stating that the applicant worked for the company from August 25, 1986 to February 20, 1989.
- A letter dated March 13, 1989 from [REDACTED] Office Manager of [REDACTED] Corporation, stating that the applicant worked as a welder for the company for eight months in 1978.
- A letter dated March 13, 1989 from [REDACTED], Owner of [REDACTED] in Anaheim, California stating that the applicant worked for the company in 1985 and 1986.

- A Social Security statement showing the applicant was employed by I [REDACTED] in 1987 and [REDACTED] from 1988 through 1991 under Social Security number [REDACTED]

On September 28, 2004, the director issued a Notice of Intent to Deny (NOID) finding the documents submitted by the applicant insufficient to establish residency. The director determined that the affidavits submitted by the applicant were “not internally consistent with the other evidence in the record.” The director did not list any specific inconsistencies, but noted that applicant had failed to submit information requested to verify the information in the affidavits and establish the credibility of the affiants.

In a decision to deny the application dated December 28, 2004, the director noted that the applicant had failed to submit a rebuttal to the NOID and denied the application.

On appeal, the applicant submits additional evidence and requests that his case be reconsidered.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant’s burden of proof. Specifically:

- On his Form I-687, Application for Status as a Temporary Resident, the applicant indicates that he worked for [REDACTED] from 1982 to 1985, but [REDACTED] states in his letter that the applicant worked for the company in 1985 and 1986.
- On his Form I-687, the applicant indicates that he began working for [REDACTED] Manufacturing in February 1986, but [REDACTED] states in a letter that the applicant began working for the company on August 25, 1986. The Social Security statement submitted by the applicant shows that the applicant began working for this company only in 1988. The statement also shows that the applicant worked for [REDACTED] in 1987, a company not listed on the applicant’s Form I-687.
- On his Form I-687, the applicant indicates that he worked for [REDACTED] from 1978 to 1979, but [REDACTED] states in her letter that the applicant was employed by the company only in 1978.
- On his Form I-687, the applicant lists the address for [REDACTED] [REDACTED] t.) as the address of his employer from 1980 to 1982, but [REDACTED] does not indicate in her letter that the applicant was employed by the company during that period.
- In his affidavits, [REDACTED] states that the applicant resided at [REDACTED] Street in Orange, California from 1981 through 1993, but the applicant indicates on his

Form I-687 that he resided at this address only from 1978 to 1980 and lists three other addresses as his residences thereafter.

- [REDACTED] indicates in his affidavit that the applicant lived in his home for two years from 1981 to 1983, but fails to list the address at which the applicant resided. The dates given by Mr. [REDACTED] are not consistent with the information provided by the applicant on his Form I-687, which lists a single address as the applicant's residence from 1980 to 1984.

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).

The applicant has submitted conflicting statements as to his employment and residences in the United States. It is reasonable to expect him to resolve the contradictions through explanations from the affiants providing the contradicting testimony and through other credible evidence. The applicant has failed to present sufficient credible evidence of residency to adequately address the discrepancies noted herein. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black's Law Dictionary* 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Finally, the record reflects that on June 29, 2001, the applicant pled guilty to one misdemeanor count of driving under the influence of alcohol/drugs (California Vehicle Code § 23152A) and one misdemeanor count of driving with blood alcohol level of .08% or greater (California Vehicle Code § 23152B) in Orange County Superior Court (Case [REDACTED]). The applicant's sentence was suspended and the applicant was placed on three years of informal probation. The record also contains information indicating that the applicant was convicted on August 26, 1994 in the Municipal Court of Santa Ana, California of assault, battery and infliction of corporal injury on a spouse/cohabitant under California Penal Code (PC) §§ 240, 242, and 273.5(A), respectively. As the record does not contain official court dispositions of these convictions, a final determination as to whether these convictions, alone or in combination with the applicant's other convictions noted herein, render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a) and/or inadmissible to the United States. Nevertheless, the AAO notes that the applicant has a criminal record.

Given the contradictions in the evidence, the AAO determines 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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