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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 02 204 65469

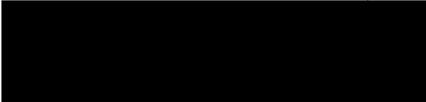
Office: LOS ANGELES

Date: APR 27 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:



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 on appeal. The appeal will be dismissed.

The director denied the application because 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. The director further determined that the applicant submitted false documentation and testimony to receive an immigration benefit.

On appeal, the applicant asserts that that he has proven his physical presence in the United States for the required period and has submitted "strong supportive documentation" to rebut and "correct the conflictive gender identification" on his immigration forms.<sup>1</sup>

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. Section 1104(c)(2)(B) of the LIFE Act; 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 or petitioner 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

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<sup>1</sup> The record contains two Forms G-28, Notice of Entry of Appearance as Attorney or Representative. The later one purports to authorize Oly C. Mongollon of "LATE" Amnesty Movement in Action - LAMA, to act on behalf of the applicant. The regulation at 8 C.F.R. § 103.2(a)(3) specifies that an applicant may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the person listed on the G-28 is not an authorized representative. Furthermore, the record contains a letter from [REDACTED] who identifies himself as attorney for the applicant. However, the record contains no Form G-28 signed by the applicant authorizing Mr. [REDACTED] to act on his behalf. Accordingly, the AAO recognizes [REDACTED] the attorney who last submitted a properly completed G-28, as the applicant's representative.

additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On a form to determine class membership, which he signed under penalty of perjury on July 13, 1993, the applicant stated that he first arrived in the United States on June 15, 1980, when he was 13 years old. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on July 13, 1993, the applicant listed no employer during the qualifying period. In a March 1, 2002 sworn declaration, the applicant stated that he lived with [REDACTED] a friend of his uncle, from June 1980 until July 1986, and that while he lived there, he helped Mrs. [REDACTED] with the chores and she helped him to find cleaning jobs with her friends. The applicant stated that among those friends was [REDACTED], for whom he cleaned house on the weekends. The applicant stated that he moved in with the [REDACTED] family, and lived with them from July 1986 to August 1989, helping them with the housework in exchange for room and board. The applicant stated that he did not attend school and did not see a doctor at any time during the qualifying period.

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

1. A June 22, 1993 affidavit from [REDACTED] in which she stated that the applicant lived with her from his entry into the United States in 1980 until approximately June 1986. Ms. [REDACTED] stated that the applicant did not pay rent but helped her with housework.
2. A July 2, 1993 affidavit from [REDACTED], in which he stated that he took the applicant to the bus station on September 15, 1987 and that he returned to the United States from Mexico on October 10, 1987 after her grandfather died. Mr. [REDACTED] also submitted a December 18, 2001 sworn statement, in which he stated that he met the applicant when he lived with Mrs. [REDACTED], and that the applicant came to live with his family in July 1986.
3. A letter from [REDACTED], in which he stated that he met the applicant in 1980, when the applicant lived with Mrs. [REDACTED] a friend of Mr. [REDACTED]. Mr. [REDACTED] stated that the applicant cleaned house for him on the weekends until 1991.

The applicant submitted no contemporaneous documentation or other evidence to document his presence and residency in the United States during the requisite period. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant submitted minimum supporting statements from friends and close acquaintance. The applicant submitted no objective or independent evidence to support his claim of residency in the United States during the requisite period.

Given this lack of contemporaneous documentation and the lack of objective evidence, it is concluded that the applicant has not established that he more likely than not resided continuously in the United States during the required period.

The director also found that the applicant had submitted false documentation and given false testimony in connection with his LIFE Act application. The director's decision was based on the applicant's identification

of himself on immigration applications and forms, including his Form I-485, Application to Register Permanent Resident or Adjust Status, as a female when he is biologically a male, and his submission of a false birth certificate.

In response to the Notice of Intent to Deny (NOID) dated July 22, 2004, the applicant stated that he is a "male/female transgender in the process of completing [his] physical/psychological change, and/or sex reassignment [that he] initiated almost 20 years ago." The applicant stated that he has always used the name "Isaura" as it "conforms to how [he] identifi[es] with [his] sexual orientation." The applicant asserts that the director's language in the NOID regarding the applicant's failure to inform CIS of his true gender violated the Gay and Transgender Anti-Discrimination Act.

As noted by the director, the Gay and Transgender Anti-Discrimination Act is a proposed statute that is advocated for adoption for all states by the Center for Policy Alternatives. The proposal has not been adopted by the U.S. Congress and is not applicable to the CIS. Further, nothing in the director's decision can be deemed discriminatory in nature. According to the applicant's own statement, he equivocated when the interviewer questioned him about use of the name Jose and he failed to inform the interviewer of the true nature of his sexual orientation.

Nonetheless, there is no evidence in the record that the applicant's failure to disclose his true gender was done with the intent to deceive or to obtain an immigration benefit. The applicant identified himself as both a male and female on immigration documents. For example, on the Form I-687 application, the applicant listed his sex as female in block 9 and checked the second block in block 37, indicating that he was a male required to register under the Military Selective Service Act. As correctly noted by the applicant, immigration benefits are not dependent upon the biological sex of the applicant. Therefore, we withdraw any inference to that effect in the director's decision.

However, the applicant submitted no credible evidence to explain his use of a falsified birth certificate. The applicant submitted a birth certificate in the name of [REDACTED]. However, according to a copy of a Petition for Change of Name filed by the applicant in the Los Angeles Superior Court on July 29, 2004, his birth name is [REDACTED]. The applicant submitted no birth certificate in that name and submitted no evidence that the court granted the name change.

The applicant asserted in his September 21, 2004 sworn statement submitted in response to the NOID, that the birth certificate in the name of [REDACTED] had been provided to him by Mrs. [REDACTED]. The applicant did not deny that the birth certificate that he submitted had been manufactured, and submitted a list of amendments to his I-485 application that changed all references from female to male and changed his name from [REDACTED]. The record does not reflect, however, that the applicant has submitted a birth certificate reflecting his birth name. Accordingly, the record establishes that the applicant submitted a falsified document in support of his LIFE Act application and failed to inform immigration officials of the fact.

The record reflects that the applicant was arrested on March 30, 1987 by the Los Angeles Police Department for a violation of California Penal Code 245(a), assault with a deadly weapon without a firearm with great bodily injury. Booking number [REDACTED]. The prosecutor determined that there was a lack of corpus and declined to prosecute. The record also reflects that the applicant was arrested by the Los Angeles Police Department on December 1, 1987 for disorderly conduct prostitution. Case number [REDACTED]. The record does not contain a final disposition of this offense.

The applicant has failed to establish that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The applicant also submitted a falsified document in support of his LIFE Act application. Accordingly, he is ineligible for adjustment of status under the LIFE Act.

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