

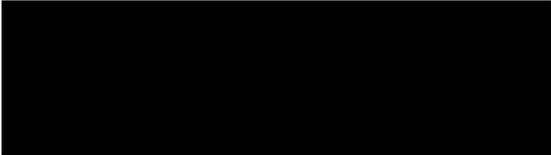
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

AUG 15 2007

MSC 02 214 60266

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.

On appeal, the applicant provides copies of additional documents along with previously submitted documents in support of the appeal.

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:

- A copy of his Fijian passport which reflects that the applicant: 1) was issued a visa on February 28, 1986 by the New Zealand immigration; 2) departed Fiji on March 2, 1986; 3) was issued a

B-2 multiple entry non-immigrant visa on April 24, 1986 by the United States Embassy in Auckland, New Zealand; and 4) lawfully entered the United States on August 28, 1986.

- A 1988 wage and tax statement and a Form 1040A, U.S. Individual Income Tax Return.
- Copies of personal checks dated in October and November 1987, and a bank statement from The First National Bank in Mineola, Texas dated November 9, 1987.
- Form 100, Corporation Franchise or Income Tax Return for the periods beginning December 6, 1986 and December 1, 1987, respectively.
- Copies of Articles of Incorporation regarding Mascot Enterprises USA filed on December 10, 1986.
- A social security statement dated April 11, 2001, reflecting the applicant's earning since 1988.
- A notarized affidavit from [REDACTED] Patel of Los Angeles, California, who indicated that the applicant resided with him at [REDACTED], Signal Hill, California from December 1981 to February 1986. The affiant attested to the applicant's departure from the United States in February 1986 to Fiji, his return in August 1986, and to his residence in Mineola, Texas until April 1987. The affiant asserted that the applicant resided with him for a brief time upon his return in April 1987 to the Los Angeles area, and was subsequently offered resident manager's positions at the "Amiricana" Motel in Anaheim and Travelodge Galleria Inn in Redondo Beach.
- A notarized affidavit from [REDACTED] of Studio City, California, who indicated that he first met the applicant in February 1982 at the applicant's residence at [REDACTED] Signal Hill, California. The affiant attested to the applicant's residence at [REDACTED] [REDACTED] from December 1981 to February 1986, his departure from the United States in February 1986, his return in August 1986, his residence in Mineola, Texas upon his return from Fiji, and his subsequent residence in Los Angeles.
- A Form I-171C, Notice of Approval or Extension of Nonimmigrant Visa Petition of H or L Alien, approved on February 4, 1988 on behalf of the applicant. It is noted that the petitioner is the applicant's father.

It is noted for the record that the Form I-485 application indicates that the applicant had been arrested for driving under the influence either in 1991 or 1992 in El Segundo, California. The final outcome of this arrest is unknown.

On October 7, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits and statements submitted to establish his claim of residence for 1981 to 1986 did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record.

The applicant, in response, asserted that along with the affidavits, he submitted "documented evidence of my continuous physical presence in the United States from November 6 1986 through May 4, 1988."

The director, in denying the application, acknowledged the documents submitted to establish residence and physical presence for 1986 to 1988; however, the director noted that the applicant had failed to provide evidence to establish his "physical presence" from before January 1, 1982 to 1985. On appeal, the applicant submits:

- A social security statement dated March 31, 2004, reflecting the applicant's earning since 1988.
- A letter dated January 13, 2005 from [REDACTED] who indicated that he has known the applicant since his arrival in the United States in 1981. The affiant asserted that on many

occasions, he has offered the applicant assistance and advice on banking and other business related investment matters.

- A notarized affidavit from [REDACTED] manager of All States Motel, who indicated that the applicant rented a room from December 1981 to February 1986 at All States Motel located at [REDACTED] Signal Hill, California. The affiant asserted that there were no rent receipts to provide as the business no longer existed and it had been over 20 years since the applicant resided at the motel.
- A receipt dated January 11, 1983 from [REDACTED] and [REDACTED] of Sacramento, California.
- A notarized affidavit from [REDACTED], president of David Brody & Co., an accounting firm, who indicated that he has personally known the applicant since 1985 as the applicant was employed as an intern in 1985 and 1986.

Although the director inadvertently noted that the applicant had failed to establish "physical presence" from 1981 to 1985, the fact remains the documents from the affiants discussed above are not substantive enough to support a finding that the applicant continuously resided in the United States prior to January 1, 1982 through August 27, 1986.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. In the instant case, the applicant has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [REDACTED] and [REDACTED], in their affidavits, indicated the applicant resided at [REDACTED] Signal Hill, California from December 1981 to February 1986 and upon the applicant's returned from Fiji he resided in Texas. However, the applicant did not list any residence in Texas on his Form I-687 application. It is noted that according to the interviewing officer's notes, [REDACTED] is the applicant's brother-in-law. As such, the affiant must be viewed as having a self-evident interest in the outcome of proceedings, rather than as independent, objective and disinterested third party. In addition, neither affiant attested to the applicant's 1987 departure from the United States as claimed on his Form I-687 application.
2. [REDACTED], in his affidavit, indicated he first met the applicant in February 1982. As such, he cannot attest to the applicant's residence in the United States prior to February 1982.
3. [REDACTED], in his affidavit, indicated the applicant was offered resident manager's positions at the "Amiricana" Motel in Anaheim and Travelodge Galleria Inn in Redondo Beach. The applicant, however, did not list either employment on his Form I-687 application.
4. [REDACTED] in his initial affidavit, attested to the applicant's residence at [REDACTED]. However, in his subsequent affidavit, the affiant now claims that the applicant resided at All States Motel, which was located at [REDACTED]. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in

order to resolve the contradictions. However, no statement from the affiant has been submitted to resolve his contradicting affidavits.

5. [REDACTED] indicates that he has known the applicant since 1981, but fails to provide an address for the applicant during the period in question.
6. [REDACTED], in his letter, indicates that the applicant was an intern from 1985 to 1986 at David Brody & Co. The applicant, however, did not list this employment on his Form I-687. The affiant's letter also contradicts [REDACTED] affidavit, in which he indicated that the applicant "worked at our family owned hotel business."
7. The 1986 and 1987 income tax returns have little evidentiary weight or probative value as they were neither signed nor certified as being filed.
8. 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 provides no explanation why his alleged 1986 departure was not claimed on his Form I-687 application. 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 44 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 1986 departure, is a strong indication that the applicant may not have been residing in the United States prior to his August 28, 1986 entry.

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 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). 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 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.

Finally, beyond the decision of the director, assuming, arguendo, the applicant resided in the United States prior to August 28, 1986, his absence from February 1986 to August 28, 1986 exceeded the forty-five (45) day limit for a single absence as well as the aggregate limit of one hundred and eighty (180) days for total absences from the United States. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

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