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Office: LOS ANGELES

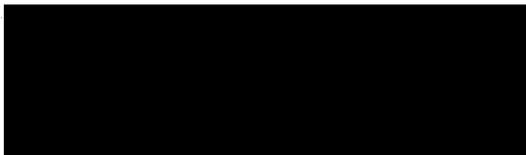
Date:

DEC 14 2007

MSC 02 092 64456

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. 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.

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 failed to demonstrate that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. The director also stated that applicant is inadmissible under the section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II).

On appeal, applicant contends that he has resided in the United States since April 1981. He requests that his application be reconsidered as court records of his convictions no longer exist. He submits copies of birth certificates of his children to prove residency, as well as certified court records.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982; and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

The regulation at 8 C.F.R. § 245a.15(c)(1) defines “continuous unlawful residence” as follows:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. (Emphasis added.)

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 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 issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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, and whether the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the ACT.

#### Continuous Unlawful Residence

On December 31, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, in an attempt to establish entry prior to January 1, 1982, and continuous residence in the United States in an unlawful status through May 4, 1988. The applicant submitted a July 7, 2004, affidavit of witness by [REDACTED]. The affiant stated that the applicant rented one bedroom from her from April 1981 through January 1984 in Pacoima, California. She further stated that the applicant has lived continuously in the United States from 1981 through 2004.

In the Notice of Intent to Deny, dated February 11, 2005, the director noted several inconsistencies. In the applicant's Record of Sworn Statement in Affidavit Form, dated January 21, 2005, the applicant he has never left the country since his entry in 1981. In the applicant's Form I-687, he stated that he was absent from the United States from August 13, 1987 to March 13, 1988. In a December 11, 2001, statement, the applicant stated that he was outside of the United States from October 1987 until February 1988. In his Form I-485, the applicant stated that his date of last arrival was February 1986. In the first instance, the applicant stated he never left the United States since his entry in 1981, whereas in later statements the applicant indicates absences at different times from 1986 to 1988.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no explanation for these inconsistencies. Based on the inconsistent statements by the applicant himself and that of the affiant, these

documents cannot be considered credible evidence of the applicant's continuous unlawful presence in the United States during the statutory period.

There are serious questions of credibility that have arisen from the applicant's submissions. It is impossible for us to find that all of the applicant's claims are true, because those claims are sometimes in conflict. Given these credibility issues, we cannot simply take unsupported claims at face value. Competent objective evidence would overcome these issues, pursuant to *Matter of Ho*, but the lack of primary evidence, coupled with the inconsistent claims in the affidavits with the applicant's own statements, leaves little foundation upon which we could confidently base a finding of eligibility.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. See, e.g., *Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9<sup>th</sup> Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application or visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

In the instant case, the inconsistencies described above lead the AAO to conclude that the evidence of the applicant's claimed residency is not credible. The record does not contain any contemporaneous evidence, or other sufficient credible evidence, to establish that the applicant resided in the United States during the requisite period. Even if the applicant's statements were taken at face value, his absence from October 1987 to February 1988, over 93 days, exceeded the forty-five (45) day limit as permitted by 8 C.F.R. § 245a.15(c)(1). The applicant's absence from August 13, 1987 to March 13, 1988, 213 days, exceeded the forty-five (45) day limit as well. Moreover, combined these absences exceeded the allowed one hundred and eighty (180) days aggregate of all absences by 126 days. Thus, the applicant has failed to demonstrate continuous unlawful residence in the United States during the statutory period.

Section 212 (a)(2)(A)(i)(II) of the Act

Section 1104(c)(2)(D) of the LIFE Act states that an alien must establish that the alien is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the ACT.

Section 212(a)(2)(A)(i)(II) of the Act states, in pertinent part, that:

Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . . a violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . . . is inadmissible.

In a January 21, 2005, Record of Sworn Statement in Affidavit Form, the applicant stated that he was arrested for selling cocaine and marijuana in Blyth Street, Panorama City. He sold them for ten dollars (\$10.00) a bag and was caught selling to a narcotics officer. He started selling drugs/narcotics when he did not have any money. He obtained the drugs from someone who stated that it came from Durango, Mexico.

In his Form I-485, at Part 3, Question 1b, when asked if he had ever been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations, the applicant indicated "Yes."

In a May 15, 2003, Request for Additional Evidence, the applicant was requested to submit certified court documents, which established final disposition, in each of the following cases: 1) February, 20, 1986, Sell furnish etc Marijuana Hashish (Case # [REDACTED]) 2) August 9, 1999, Annoying or Molesting a Child (Case # [REDACTED]), and 3) January 17, 2000, Failure to Appear After Written Promise (Case # [REDACTED])

Although the applicant attempted to obtain certified court records for the above cases, the various courts found no record of the applicant or any of his aliases. The record reflects that the applicant submitted a May 23, 2003, letter from the Superior Court, Northwest District, Van Nuys, California, which stated that after a thorough search of their records, they were unable to locate any records and/or information on [REDACTED]. He submitted a January 25, 2005, letter from the Superior Court, North Valley District, San Fernando, California, which stated that a thorough search of the criminal/traffic index found no records in reference to [REDACTED]. The applicant also submitted a January 24, 2005, letter from the Superior Court of California, County of Los Angeles, Los Angeles, California, which stated that there is no record of [REDACTED]

On appeal, the applicant stated, "I was convicted on a misdemeanor charge in 1986 for selling/furnishing a narcotic substance." In the absence of court records, the AAO will not make a finding that the applicant was convicted. However, an actual conviction of a drug trafficking offense or violation is not necessary to establish the ground of inadmissibility under Section 212(a)(2)(A)(i)(II) of the INA; an alien may be excluded if an immigration officer knows or has reason to believe that the alien is or has been an illicit trafficker in drugs. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977).

The intent to distribute a controlled substance has been inferred solely from possession of a large quantity of the substance. *United States v. Love*, 559 F.2d 107 (5<sup>th</sup> Cir. 1979). *United States v. Muckenthaler*, 584 F.2d 240 (8<sup>th</sup> Cir. 1978). In the instant case, the applicant was caught in the act of selling cocaine and marijuana to a narcotics officer.

Generally speaking, possession is established when the controlled substance is found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. In this case, the record does not indicate where the controlled

substance was found. However, one may infer that the controlled substance was found on the applicant since the record reflects that he was caught in the act of selling to a narcotics officer.

The applicant's arrest for selling a cocaine and marijuana is sufficient to conclude that there is reason to believe that the applicant has been an illicit trafficker in cocaine and marijuana, even though he may not have been actually convicted of trafficking. Accordingly, the applicant is inadmissible under Section 212(a)(2)(A)(i)(II) of the ACT.

Therefore, for the reasons state above, the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Furthermore, the applicant is inadmissible under Section 212(a)(2)(A)(i)(II) of the ACT. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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