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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC 02 071 66870

Office: LOS ANGELES

Date: JAN 04 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:

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.

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, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director determined that the applicant had been convicted of three or more misdemeanors and therefore, pursuant to 8 C.F.R. § 245a.18(a), was inadmissible to the United States. Accordingly, the director denied the application for adjustment of status as a permanent resident. The director also 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 applicant submits additional documentation in support of his appeal.

The record contains copies of dockets, indicating that the applicant was convicted of the following misdemeanor offenses:

- April 16, 1999, violation of Municipal Code 16.11.030, unauthorized removal of trash. The applicant was sentenced to pay a \$20.00 fine plus assessments. (Case no. [REDACTED])

June 4, 2001, violation of California Vehicle Code 23152(a) and (b), driving under the influence of alcohol and blood alcohol level at .08 or over. For the former offense, the applicant received a suspended sentence and was placed on probation for three years, ordered to pay a \$390.00 plus other assessments and costs. Punishment for the latter offense was stayed pursuant to California Penal Code 654. (Case no. [REDACTED])

January 22, 2003, violation of California Vehicle Code 21802(a), failure to yield/stop at a stop sign and violation of Vehicle Code 12500(a), driving without a valid driver's license. The applicant was ordered to pay restitution in the amount of \$100.00 and was ordered to complete 80 hours of community service. (Case no. [REDACTED])

The applicant's Federal Bureau of Investigation (FBI) record also indicates that he was arrested on September 17, 1990 by the Santa Ana, California Sheriff's Office, was convicted in the Municipal Court of Newport Beach, California of a violation of the California Penal Code, 487.1 (grand theft property) and was sentenced to 15 days in jail.

The record also contains a Form No. [REDACTED] from the Superior Court of California, Orange County, dated March 28, 2003, indicating that records for the September 19, 1990 conviction, case number [REDACTED], violation of section 487.1 PC, was no longer maintained by the court in accordance with state law, which provides for the destruction of certain misdemeanor records after five years. The applicant was advised that he could contact the California Department of Justice, Bureau of Criminal Identification to obtain copies of the destroyed records; however, there is no indication that he did so.

The record, therefore, reflects that the applicant was convicted of four misdemeanors. The regulation at 8 C.F.R. § 245a.18 provides:

- (a) *Ineligible aliens.* (1) An alien who has been convicted of a felony or of three or [more] misdemeanors committed in the United States is ineligible for adjustment to LPR status under this Subpart B.

The applicant did not address this issue or provide additional documentation on appeal. Therefore, as the applicant has been convicted of at least three misdemeanors, he is inadmissible to the United States and is ineligible for permanent resident status under section 1104 of the LIFE Act.

The director further determined that the applicant did not establish that he continuously resided in the United States in an unlawful status since 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. 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 petitioner 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 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 questionnaire to determine class membership, which he signed under penalty of perjury on August 10, 1990, the applicant stated that he first entered the United States in an unlawful status in June 1981. On his Form I-687, **Application for Status as a Temporary Resident**, which he signed on August 8, 1990, the applicant stated that he worked for [REDACTED] Inc. in Los Angeles, California from June 1981 to November 1983, and at [REDACTED] Inc. from March 1984 until the date of the Form I-687 application. The applicant claimed during his LIFE Act adjustment interview on April 8, 2003, that he worked for [REDACTED] Inc. under the name of [REDACTED]. However, the applicant denied on the Form I-687 application that he had used other names or that he was known by any other name. The applicant submitted no documentation to confirm that he was known and worked under the name of [REDACTED].

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

1. Copies of pay slips for pay periods ending September 13 and September 27, 1981 from [REDACTED] Inc. in Los Angeles identifying the employee as [REDACTED]. A copy of a 1982 Form 540A, California Individual Income Tax Return for [REDACTED]. As discussed above, the applicant submitted no documentation to establish that he and [REDACTED] are the same person. Additionally, the Form 540A for [REDACTED] identifies the filer's spouse as [REDACTED] and claims children [REDACTED] and [REDACTED] and parents (one of whom is [REDACTED] as dependents. The applicant stated on his Form G-325A that he married his only wife, [REDACTED] on January 20, 1992. The names that he provided for his children on his Form I-485 application does not include the names [REDACTED] or [REDACTED], and his parents are identified as [REDACTED] and [REDACTED]. 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. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).
2. An August 10, 1990 affidavit from [REDACTED], in which she stated that the applicant is a "very close" cousin, and that he lived in the United States from September 1981 until the date of her affidavit.
3. An August 10, 1990 affidavit from [REDACTED], in which he stated that the applicant lived at [REDACTED] in Los Angeles from December 1981 to November 1987. Mr. [REDACTED] did not indicate the source of his knowledge regarding the applicant's residency during this time. Additionally, this statement conflicts with that of the applicant on his Form I-687 application, on which he stated that he lived at this address from May 1981 to April 1986. We note further that the applicant claimed to have lived at [REDACTED] from May 1986 to March 1989, which is the same address claimed by Mr. [REDACTED] as his own. However, Mr. [REDACTED] did not indicate at that time that the applicant lived at his address at any time during the qualifying period. On appeal, the applicant submits an October 30, 2004 affidavit from Mr. [REDACTED] in which he stated that he has known the applicant since 1984, and that the applicant lived with him at [REDACTED] from August 1984 to September 1987. *Id.*
4. A copy of a May 27, 1983 receipt from [REDACTED] in Santa Ana, California. Although the receipt has the applicant's name, there is no evidence that it was entered at the same time the receipt was issued.
5. A July 30, 1990 letter from [REDACTED] in which he certified that the applicant worked at [REDACTED] Inc. from March 3, 1984 until May 18, 1990. This letter is highly suspect, however. The letterhead identifies the company as [REDACTED] Inc. Further, Mr. [REDACTED] did not indicate his position in the company, the source of the information used to provide the information regarding the applicant's employment, and did not identify the applicant's address at the time of his employment as required by 8 C.F.R. § 245a.2(d)(3)(i). Mr. [REDACTED] written signature also does not match the typed name that appears on the letter. *See Matter of Ho*, 19 I&N Dec. at 591.

6. A 1987 Form 1040, U.S. Individual Income Tax Return, dated February 1, 1988. However, the form is not signed and there is no indication that it was ever filed with the IRS.
7. A 1988 Form W-2, Wage and Tax Statement from [REDACTED] Inc. We note that the address for this company is the same as that listed on the letterhead for [REDACTED] Inc. The applicant also submitted a copy of a 1988 Form 1040A, U.S. Individual Income Tax Return and a copy of a Form 1099G, Report of State Income Tax Refund, indicating that the applicant received a tax refund from the state of California in 1988.

On appeal, the applicant also submits the following documentation:

8. A copy of a November 9, 2004 affidavit from [REDACTED] in which he stated that he met the applicant in August 1983 through the applicant's brother and they have been friends since that time.
9. A November 22, 2004 affidavit from [REDACTED] in which he stated that the applicant worked for him as a landscaper from June 1983 through December 1986. We note that the applicant did not claim to have worked for Mr. [REDACTED] during this time frame, stating instead that he worked for [REDACTED] and [REDACTED] during this time frame. *See id.*
10. A November 22, 2004 affidavit from [REDACTED] in which she stated that she met the applicant in December 1981 at a Christmas party.
11. Copies of rent receipts dated June 5, 1984; January 3, 1985; May 1, 1985; March 4, 1986; and September 4, 1986. All of the receipts reflect that they were made by [REDACTED] with the exception of the September 1986, which shows the name of [REDACTED]. None of the receipts indicate the tenancy or object for which rent was paid, and do not reflect that the rent was for any place or anything within the United States.

The applicant's evidence consists of conflicting affidavits and suspect contemporaneous documentation. Given these unresolved issues in the record, the applicant has failed to establish continuous residence in the U.S. for the required period. Further, as he has been convicted of three or more misdemeanors, he is inadmissible into the United States.

The director further determined, and we concur, that the applicant is ineligible for adjustment of status under 8 C.F.R. § 245a.6.

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