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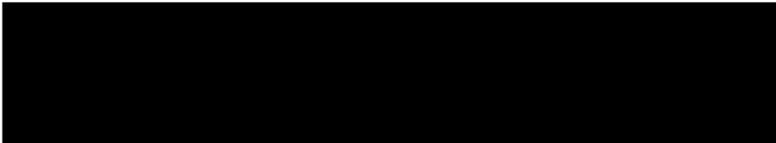
Office: San Francisco

Date: **JUL 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:



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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is 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. The director further determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, counsel states that the applicant has submitted the best evidence available to him in establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel further states that there is no evidence to support a finding inadmissibility under section 212(a)(6)(C)(i) of the Act.

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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

The record contains the following documents relevant to the application:

- A March 17, 1990 sworn affidavit by applicant, who stated that he had continuous residence in the United States since November 20, 1981, and was self-employed since December 1981.
- An April 2, 1990 sworn affidavit by applicant, in connection with his application for class membership, who stated that he first entered the United States in November 1981 and last left the United States on February 24, 1986.
- A November 1, 2001 letter and January 7, 2003 letter from [REDACTED] who certified that the applicant was employed at Serra Cab from July 1987 to August 1994.
- A April 8, 2002 letter from [REDACTED] who certifies that he has known the applicant since April 1981 and the two of them lived together for a while and worke[d] together from sometime.”
- A January 15, 2003 Record of Sworn Testimony by applicant, who certified that he entered United States in March 1981 and remained until January 1986.
- A January 9, 2003 letter from [REDACTED] who stated that the applicant was a student in F-1 status from March 1986 until September 1986.
- A January 13, 2003 sworn affidavit from [REDACTED] who stated that he has known applicant since 1981 and is the applicant’s first cousin.
- A January 14, 2003 sworn affidavit from [REDACTED] who stated that she has known applicant since 1981 and they met through her husband.
- A January 21, 2003 sworn affidavit from [REDACTED] who stated that he has known applicant since 1981 and they worked together in 1986 and 1987.
- A March 12, 2003 letter from the State of California, Department of Motor Vehicles, which stated that the number series beginning [REDACTED] and ending [REDACTED] was first issued on January 02, 1986. The applicant’s driver’s license number [REDACTED] falls within said number series.

- A July 25, 2004 letter from [REDACTED] who stated that he has known applicant since 1983.
- A July 27, 2004 letter from [REDACTED], who stated that he has known applicant since 1982 and that they lived together.
- A June 6, 2005 telephonic statement by [REDACTED] who stated that his previous affidavit (dated January 21, 2003) was “not right” as he did not know the applicant before he started working at Gateway Cab in 1985. He further stated that no one would have worked for Gateway, or any other cab company in Daly City, before obtaining a valid hack license.

The above documentation reflects affidavits from individuals attesting to the applicant’s presence in the United States prior to 1982. The sworn affidavits of [REDACTED] and [REDACTED] are vague and lack credibility. No details are provided to substantiate the applicant’s presence in the United States prior to 1982. These affidavits alone do not deter from the applicant’s credibility. The courts have held that witness testimony and other evidence may not be rejected on credibility grounds without a specific finding accompanied by clear and persuasive reasons for such rejection. *Vera-Villegas v. INS* 330 F.3d 1222, (9th Cir. 2003). However, the affidavits are of little evidentiary value when taken into context with the totality of the evidence.

Specifically, in a sworn affidavit on March 17, 1990, the applicant stated he had continuously resided in the United States since November 20, 1981. On January 15, 2003 in a Record of Sworn Testimony, the applicant stated he entered the United States on March 1981. The applicant has not only contradicted his own testimony, but also the affidavit of [REDACTED] that stated that he had known the applicant since April 1981.

Furthermore, on January 21, 2003 in a sworn affidavit, [REDACTED] stated that he has known the applicant since 1981 and they worked together in 1986 and 1987. On June 6, 2005 in telephonic statement, [REDACTED] stated that his previous affidavit was “not right” as he did not know the applicant before he started working at Gateway Cab in 1985. Thus, [REDACTED] has attested to different, conflicting information.

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 contradictory statements from the applicant himself and [REDACTED] these affidavits cannot be considered credible evidence of the applicant’s presence in the United States prior to 1982. Further, although other affiants indicated that they have known the applicant since 1981, their statements lack sufficient detail to provide corroborative evidence of the applicant’s presence in the United States in 1981.

At issue, first and foremost, 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 only such evidence submitted begins after applicant's entry as a nonimmigrant student in February 1986. The lack of primary evidence prior to 1986, coupled with the inconsistent claims in the affidavits, 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 (9th 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 this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's claimed residency is not credible. Thus, the record does not contain any contemporaneous evidence, or other sufficient credible evidence, to establish that the applicant resided in the United States prior to January 1, 1982.

The applicant has failed to establish that he maintained continuous unlawful residence in the United States during the requisite period for two reasons. First, his evidence is insufficient to establish continuous unlawful residence. Second, the credibility of the applicant and affiants has not been established.

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act on April 2, 1990. On the Form I-687 application, the applicant indicated that he last entered the United States with a F-1 student visa on February 24, 1986. The record contains a letter from the director of New College of California, verifying that the applicant was a full-time student in F-1 status from March to September 1986. For this additional reason, the applicant does not meet the requirement of "continuous unlawful residence" as defined at 8 C.F.R. § 245a.15(c)(1). The applicant lawfully entered the United States on a nonimmigrant student visa in February 1986 and attended school until September 1986.

The applicant has, therefore, 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. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

On appeal, counsel asserts that there is no evidence to support a finding of misrepresentation, only mere speculation. The director based this finding of inadmissibility, determining that the applicant obtained two visas on the basis of material misrepresentations, i.e., in applications for a nonimmigrant student and tourist visas in 1986 and 1999, respectively. The director states that had the adjudicating officers

known of the applicant's purported prior presence in the United States, the visas would not have been granted (pursuant to Section 214(b)) of the Act). The director then infers that the applicant must have therefore made material misrepresentations to successfully procure the visas. As logical as this inference may be, the record is entirely silent as to why the visas were issued and what evidence, fraudulent or otherwise, the applicant may have provided in support of his visa applications. Absent any affirmative evidence of fraud, this basis for a finding of material misrepresentation is insufficient.

The director's second basis for a finding of material misrepresentation is the applicant's Application for Waiver of Grounds of Excludability (I-690) filed in connection with his class membership application, upon which the applicant stated, "I obtained my visa to continue my stay in the U.S.A." The director found this sworn statement to be fraudulent in light of the applicant's failure to prove, by a preponderance of the evidence, continuous unlawful presence in United States since 1982. Misrepresentations must not only be false but material. Although the applicant's statement on the I-690 is false, it is not a material misrepresentation. The applicant's statement did not shut off a line of inquiry regarding his prior unlawful presence in the United States, as evidenced by the fact that the director nonetheless continued to make a careful investigation into the applicant's assertion of unlawful presence despite the I-690 statement. Furthermore, the director's determination that the applicant failed to meet the unlawful presence requirement was based on the lack of contemporaneous documentation and the vague and inconsistent affidavits submitted by the applicant, evidence that the I-690 statement was not material to the decision.

Accordingly, the director's finding of inadmissibility, pursuant to section 212(a)(6)(C) of the Act, is withdrawn.

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