

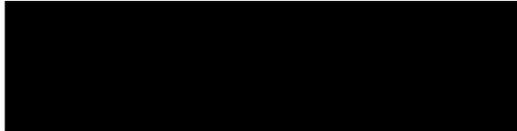
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



L2

FILE:

MSC 03 239 62960

Office: Sacramento

Date: JUL 26 2007

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, San Francisco, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, the applicant contended that he had submitted sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant submitted documents in support of his 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. Section 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership 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 (Act) on or about November 20, 1990. At part #16 of the Form I-687 application, the applicant claimed that he first entered the United States on March 5, 1981. However, at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed "[REDACTED]" in Las Vegas, Nevada, as his only residence in this country from January 5, 1982 to October 1988. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant indicated that he worked only for Flor Lawn Care in Las Vegas, Nevada as a gardener from January 5, 1982 to October 5, 1988. The fact that the applicant failed to list either an address of residence or employment in the United States prior to January 5, 1982 seriously impairs the credibility of his claim that he continuously resided in this country from prior to January 1, 1982.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted three affidavits of residence that are signed by [REDACTED], [REDACTED], and [REDACTED] respectively. All three affiants declare that they had known the applicant since 1981. However, none of the affiants provided any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in the United States, to corroborate the applicant's claim of residence in this country for the period in question.

The applicant also submitted an employment letter that contained the letterhead of [REDACTED] and is signed by foreman [REDACTED]. [REDACTED] indicated that the applicant had been employed by this enterprise from January 5, 1982 to October 5, 1988 and that his duties included the planting of shrubs and rock gardens. While the [REDACTED] attested to the applicant's employment for the stated period, he failed to provide the applicant's address of

residence during his employment with Flor Lawn Care as required under 8 C.F.R. § 245a.2(d)(3)(i).

A review of parts #48 through #51 of the Form I-687 application reveals that the application itself as well as those documents noted above, with the exception of the employment letter signed by [REDACTED], that were included in the application package had been prepared, notarized, and reviewed by [REDACTED].

Subsequently, on May 27, 2003, the applicant submitted his Form I-485 LIFE Act application. A review of the Form I-485 LIFE Act application shows that it was prepared by [REDACTED] of Manning & Sutfin in Sacramento, California.

With the Form I-485 LIFE Act application, the applicant included a separate declaration in which he claimed that he first entered the United States by crossing the border without inspection from Mexico to California in March of 1981. The applicant asserted that he subsequently lived at [REDACTED] in Compton California while working at a hand car wash at Avalon and [REDACTED] until January of 1982. The applicant stated that he went to Las Vegas, Nevada and began working for Flor Lawn Care in January 1982 and continued working for this enterprise until October 1988. The applicant noted that he lived at [REDACTED], in Las Vegas, Nevada from May 1982 to October 1988. However, the applicant failed to provide any explanation as to why both his address of residence in Compton, California and employment for the hand car wash in that period from March 1981 to January 1982 was not listed at parts #33 and #36 of the Form I-687 application. Further, the applicant's testimony that he lived at the [REDACTED] St., address in Las Vegas, Nevada beginning in May 1982 directly contradicted his prior testimony that he began residing at this address in January 1982 at part #33 of the Form I-687 application.

In support of his claim of residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] declared that he had personal knowledge that the applicant went to the United States in the spring of 1981 because he put the applicant on a bus in Mexico to start his journey to this country. [REDACTED] indicated that the applicant subsequently lived and worked in the Compton, California area and sent money back to his family in Mexico. While [REDACTED] attested to the applicant's residence in this country since the spring of 1981, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country during the requisite period. In addition, the probative value of [REDACTED]'s testimony is further limited by the fact that he is a member of the applicant's family and must be considered to have an interest in the outcome of these proceedings rather than being an independent and disinterested witness.

The applicant included a new affidavit of residence signed by [REDACTED] who previously provided an affidavit in support of the applicant's Form I-687 application. In her new affidavit, [REDACTED] noted that she first met the applicant when he came to the United States in 1981. [REDACTED] indicated that the applicant first lived in the Los Angeles, California area and then

moved to Las Vegas, Nevada before returning to the Los Angeles area in the late 1980's. However, other than noting the general locale of the applicant's residences throughout the 1980's, [REDACTED] failed to provide any direct, specific, and verifiable information relating to the applicant's residence in the United States for the period in question.

The applicant provided an affidavit signed by [REDACTED] who stated that the applicant lived with him at [REDACTED] 3 in Compton, California from the spring of 1981 to 1982. [REDACTED] indicated that the applicant worked in a car wash during this period and that he subsequently moved to Las Vegas, Nevada to look for a better job. However, as noted previously, the applicant failed list either an address of residence in Compton, California or employment for a car wash at parts #33 and #36 of the Form I-687 application. In addition, [REDACTED] failed to provide any verifiable and probative testimony relating to the applicant's residence in this country for the remainder of the requisite period after 1982.

The applicant submitted a photocopy of a month-to-month lease for premises at [REDACTED] in Las Vegas, Nevada beginning May 1, 1982 that is signed by the applicant as lessee and [REDACTED] as the lessor's agent.

The applicant included four photocopied rent receipts for the premises at [REDACTED], in Las Vegas, Nevada that are signed by [REDACTED] and dated, October 1, 1983, April 1, 1984, July 2, 1985, and January 1, 1986, respectively.

The applicant provided two photocopied receipts that are dated March 8, 1987 and April 20, 1988, respectively. The receipt dated March 8, 1987 is from [REDACTED] in Las Vegas, Nevada while the receipt dated April 20, 1988 is from [REDACTED]

The applicant provided photocopies of seven purportedly contemporaneous documents dated from May 1, 1982 through April 20, 1988 with the filing of his Form I-485 application on May 27, 2003. However, as previously discussed, the applicant initially filed the Form I-687 application submitted on or about November 20, 1990, but failed to include copies of any of these seven documents. Further, the instructions to the Form I-687 application advised applicants to submit documentation in support of their claim of residence in this country for the requisite period and the applicant did submit supporting documentation with his Form I-687 application. The fact that the applicant did not submit these seven contemporaneous documents, which were allegedly in his possession throughout the 1980's, until the filing of his Form I-485 on May 27, 2003 brings into question the origin and authenticity of such documents. The applicant failed to provide any explanation as to why copies of these seven documents were not submitted at any earlier point in these proceedings.

On June 22, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The district director noted that the applicant claimed to have first entered the United States on

March 5, 1981 but did not list any addresses of residence in the United States until January 1982 on the Form I-687 application. In addition, the district director stated that an attempt to confirm testimony in an affidavit signed by [REDACTED] resulted in a phone call being made to a telephone number listed as the affiant's home number on the affidavit. The district director declared that the phone number was that of a company called "Megatool" rather than the affiant's home number. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he claimed that the preparer of his Form I-687 application did not list his address of residence in the United States from his first entry into this country in March of 1981 until January 1982 because he had been living with friends in the Los Angeles, California area during this period and did not think he could obtain evidence establishing his residence with these friends. However, the explanation offered by the applicant cannot be considered as reasonable as the instructions to part #33 of the Form I-687 application ask applicants to merely list all residences in the United States since first entry without any mention of a requirement to submit corresponding evidence.

The applicant also declared that the district director reached Megatool rather than [REDACTED]'s home phone number because his work and home number had been switched in error when the affidavit was executed.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on July 13, 2004. In the notice of decision, the district director noted that Megatool had been contacted and it was learned that this enterprise had only been in existence since 1993. However, a review of the communication from Megatool reveals that the company had been at that particular address and telephone number since 1993 with no mention of the date the company came into existence. In addition, the significance of any information relating to Megatool as it relates to the applicant's credibility is minimal in that the affidavit from which such information was derived, that signed by [REDACTED], contains no probative testimony to corroborate the applicant's claim of residence in the United States during the requisite period. Consequently, this particular issue need not be examined further.

On appeal, the applicant contended that he had submitted sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

The record shows that the AAO subsequently issued a notice to the applicant on May 29, 2007, informing him of adverse information that had been obtained relating to his claim to class membership and his Form I-687 application. Specifically, the applicant was informed that the preparer of his Form I-687 application and application package, [REDACTED], was convicted of violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on December 9, 1993. The record contains evidence demonstrating that

these convictions were the result of Operation Desert Deception, a large-scale fraud investigation centered in Las Vegas, Nevada, Phoenix, Arizona, and Los Angeles, California. The operation targeted providers of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits; *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). To date, sixty people, including two former Service officers, have been convicted of legalization fraud, bribery, or tax evasion. In the course of the investigation, 22,000 files, including the applicant's file, were earmarked and segregated as having been filed in Las Vegas, Nevada in the time period under investigation. The applicant was informed that the fact that the preparer of his Form I-687 application was convicted of felony violations for her role in the submission of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits, seriously diminished the credibility of information contained in the applicant's Form I-687 application and supporting documentation. The applicant was granted fifteen days to respond to the notice.

In response, the preparer of the applicant's Form I-485 LIFE Act application, [REDACTED] submits a statement in which she contends that her experience and intuition lead her to believe that the applicant's claim of residence in the United States since prior to January 1, 1982 is accurate and true. [REDACTED] notes that not all of the applications prepared by fraudulent preparers were fabrications. However, neither the applicant nor [REDACTED] provides any independent evidence addressing the fact that the applicant's original Form I-687 application and three of four supporting documents included with this application were prepared and notarized by an individual who was convicted of violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on December 9, 1993 as a result of filing fraudulent legalization applications. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

[REDACTED] urges CIS to contact individuals who provided supporting documentation and attempt to confirm their testimony. However as noted above, the applicant has submitted three affidavits that were prepared and notarized by an individual convicted of multiple felonies for their role in the filing of fraudulent legalization applications. As such, these three affidavits cannot be considered as reliable and credible evidence. The remaining supporting documentation provided by the applicant lacks sufficient detail and specific verifiable information to corroborate his claim of residence in the United States since prior to January 1, 1982. The applicant has failed to provide a reasonable explanation as to why his address of residence in the United States from March 1981 to January 1982 was not listed at part #33 of his Form I-687 application. In addition,

the applicant has failed to put forth any explanation as to why purportedly contemporaneous supporting documents were not submitted until he filed his Form I-485 application on May 27, 2003, if such documents had truly been in his possession since the 1980's. [REDACTED] did not advance any compelling reason as to why any attempt should be made in light of the minimal probative value of the applicant's supporting documents and the inconsistencies discussed above.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 absence of sufficiently detailed supporting documentation, adverse information relating to the individual who prepared his Form I-687 application, and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence all seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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