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

L2

FILE:

MSC 02 116 61617

Office: LOS ANGELES

Date: JUN 27 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:

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 on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

The director 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.

On appeal, counsel states that the applicant has submitted sufficient evidence to meet his burden or proof under the LIFE Act. Counsel submits a brief and copies of previously submitted documentation 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. 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 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 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).

The applicant stated on a form to determine class membership, which he signed under penalty of perjury on July 28, 1990, that he first entered the United States on November 3, 1981. The applicant further stated that he left the United States on April 16, 1988 and returned on May 1, 1988. On his Form I-687,

Application for Status as a Temporary Resident, which he also signed under penalty of perjury on August 21, 1990, the applicant stated that he left the United States once during the qualifying period, from March 20 to April 25, 1988. In block 16 of the Form I-687 application, the applicant stated that he last came to the United States on January 3, 1981. 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 applicant also stated on his Form I-687 application that he lived at [REDACTED] in Riverside, California from 1981 to 1990, and that he worked in yards, and painted and cleaned houses during the qualifying period. The applicant identified no specific employer for this period.

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

1. An undated notarized declaration from [REDACTED], in which he stated that the applicant had been his friend since 1981, and had lived with him since that year. [REDACTED] also stated that the applicant left the United States on March 20, 1988 and returned on April 25, 1988.
2. A July 30, 1990 affidavit from [REDACTED] in which he stated that he had known the applicant since 1981, and that he hired him "back then and he has worked either for me or my brother in the construction business ever since." The applicant did not list [REDACTED] or his brother as an employer during the requisite period. [REDACTED] did not indicate the type of work that the applicant performed for him in the construction trade, the applicant's address at the time of his employment, or the source of the information that he relied upon in providing information about the applicant's employment. 8 C.F.R. § 245a.2(d)(3)(i).
3. A July 30, 1990 affidavit from [REDACTED], in which he stated that he had known the applicant since 1981, and that the applicant worked for him as a construction helper since 1981. The applicant did not list [REDACTED] as one of his employers during the qualifying period, and [REDACTED] did not indicate the specific work performed by the applicant during this period, the applicant's address at the time of his employment, or the source of the information that he relied upon in providing information about the applicant's employment. *Id.*
4. A July 24, 1990 affidavit from [REDACTED], in which he stated that the applicant had lived with him since 1981, and that he "is always on time for the house payment and shares the expenses."
5. Rent receipts signed by [REDACTED] the first of which is dated April 12, 1981, purportedly for a rental period of November 12 to December 12, 1981. Not only does the date of the receipt precede the date of the alleged payment, as discussed further below, it also precedes the date that the applicant claimed to have first entered the United States. 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. at 591. Other receipts submitted by the applicant are numbered sequentially, are dated for the 12th of the month, and cover periods from 1982 through 1988.

6. Money order receipts that show the applicant as the remitter with an address at [REDACTED] in Riverside, California, and dated in 1982 through 1988.
7. A copy of an envelope addressed to the applicant at [REDACTED] in "Riversai," California with a postmark dated April 4, 1986.
8. A copy of an envelope showing the applicant as the sender with an address of [REDACTED] Riverside, California. The envelope is postmarked August 29, 1986.
9. A copy of an envelope addressed to the applicant at [REDACTED] in Riverside, California, and postmarked April 17, 1987. The applicant did not claim to live at this address during the requisite period.
10. Copies of pay stubs from [REDACTED], for pay periods ending October 31, and November 14, 21, and 28, 1986. The applicant did not indicate that he worked for this employer during the qualifying period.

The applicant also submitted a copy of a pay slip that shows his address as [REDACTED] in Riverside, California. The pay slip, which does not include an employer, has been altered in two locations to change the year from 1990 to 1980, a date that precedes the time that the applicant states he first arrived in the United States.

During his November 5, 2004 LIFE Act adjustment interview, the applicant executed an affidavit in which he stated that he arrived in the United States in 1981 and stayed with his aunt in Costa Mesa for approximately two months before leaving to reside with another lady in Newport Beach, California, whose name and address he could not remember. The applicant stated that he lived there for about five to six years and that he worked as a gardener during this time. This statement conflicts with the applicant's statement on his Form I-687 application, the statements of [REDACTED] and the rental receipts signed by [REDACTED], which indicated that the lived in Riverside, California during the entirety of the qualifying period. Further, the information conflicts with that of the [REDACTED], who stated that the applicant worked with them in construction from 1981 to at least 1990. The applicant further stated in his affidavit that he had not left the United States since he first entered in 1981. However, this statement contradicts his earlier statements that he left the United States in March 1988 and returned in April.

In response to the director's Notice of Intent to Deny (NOID) dated November 23, 2004, the applicant submitted a declaration in which he attributed errors on his Form I-687 application to Rosario Gamez, who he stated filled out the Form I-687 application on his behalf.

The applicant stated that he first entered the United States in August 1981, and lived with his aunt in Costa Mesa, California for about two months, and that in October 1981, he moved in with a friend in Newport Beach and lived there from 1981 to July 1984, after which time he returned to live with his aunt until August 1985. The applicant stated that he then rented a room from [REDACTED] at [REDACTED] in Riverside, California and stayed there until 1993. The applicant stated that his absence from the United States occurred from April 16 to May 1, 1988, as stated on his form to determine class membership.

In support of his statements in response to the NOID, the applicant submitted an affidavit from [REDACTED], who identified herself as the applicant's aunt and who stated that the applicant lived with her from

August 1981 to October 1981, and again from July 1984 to August 1985 in Costa Mesa, California. The applicant submitted an October 19, 2001 and a January 18, 2005 affidavit from [REDACTED] in which she stated that she had known the applicant since October 1981, and that he lived with her at her residence in Newport Beach, California from 1981 to July 1984. The applicant also submitted an October 4, 2002 affidavit from [REDACTED], in which he stated that the applicant rented a room from him from August 1985 until 1993. In an undated statement submitted in response to the NOID, [REDACTED] stated that he had known the applicant since August 1985.

The applicant submitted no competent objective evidence to corroborate any of his statements in response to the NOID. Although the applicant attributed mistakes on his Form I-687 application to the preparer, he alone signed the document attesting to its truthfulness. Additionally, the applicant submitted documentation that allegedly supported the information on his Form I-687 application that he now states is wrong.

On appeal, counsel asserts that the applicant sufficiently rebutted the "material inconsistencies" raised in the NOID. However, as discussed above, the applicant submitted no competent objective evidence to resolve these inconsistencies. *See Matter of Ho*, 19 I&N Dec. at 591-92. The statement submitted by [REDACTED] is without credibility, as he previously stated that he had been a friend of the applicant since 1981, when the applicant began living with him. [REDACTED] also signed rent receipts attesting to this shared residency from 1981. However, in his affidavit submitted in response to the NOID, [REDACTED] stated that he met the applicant in 1985 and that the applicant began living with him at that time. Further, the applicant submitted no evidence to explain the dates shown on money order receipts that reflect [REDACTED]'s address prior to the time he now admits that he first came to know the applicant.

Accordingly, the applicant has failed to establish that he resided continuously in the United States for the required period.

Further, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act) for having willfully misrepresented material facts in order to obtain an immigration benefit.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under the Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

The applicant submitted documentation, including affidavits and money order receipts, attesting to his residency in the United States that his later statements proved were false. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting material facts in order to obtain an immigration benefit.

The applicant has failed to establish continuous residence in the United States for the required period. Further, he is inadmissible to the United States for willfully misrepresenting material facts to obtain an immigration benefit. The applicant is therefore ineligible for permanent resident status under the LIFE Act.

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

FURTHER ORDER: The AAO finds that the applicant knowingly submitted misrepresented a material fact in an effort to mislead CIS and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.