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U.S. Citizenship  
and Immigration  
Services

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OCT 25 2007

[Redacted]

FILE:

MSC 02 232 65290

Office: LOS ANGELES

Date:

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. 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.

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. The district director further determined that the applicant had been convicted of a felony and therefore, pursuant to 8 C.F.R. § 245a.18(a), was inadmissible to the United States.

On appeal, the applicant asserts that the various dates on which he stated that he arrived in the United States was due to the pressure of the interview or his failure to note the mistake. The applicant further states that he fulfilled all of the terms of his probation and that, because of that, he is able to set aside the conviction. The applicant submits a brief 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).

On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on January 2, 1990, the applicant stated that he last entered the United States on July 20, 1981. The applicant did not indicate any absences from the United States subsequent to that date. In a January

20, 2005 sworn statement given during his LIFE Act adjustment interview, the applicant stated that he first arrived in the United States on December 28, 1981. And in a Form I-765, Application for Employment Authorization, which he signed under penalty of perjury on April 30, 2002, the applicant stated that he last arrived in the United States in January 1982. 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 submitted no documentation and did not address these issues in responding to the director's Notice of Intent to Deny dated January 28, 2005. On appeal, the applicant states that he has been living in the United States since July 20, 1981, and that he was in "duress" at the time of his interview and had "mixed recollection of his correct date of entry." The applicant further states that, because the entry date on the Form I-765 application only contained a month and year, he did not notice the mistake because "the date of his original entry was not fresh in his memory." The applicant further states that he is unable to verify his entry with documentation because he lost all of his belongings during the 1992 riots in Los Angeles. The applicant asserts that his statements should be taken as evidence, and apparently given credence, as his ability to provide any other documentation is beyond his control.

However, on his Form I-687 application, the applicant only claimed one entry into the United States since 1981. In his January 20, 2005 affidavit, the applicant stated that after his 1981 entry, his only departure was in 1999. The applicant therefore has given conflicting statements regarding his entry. Given his conflicting statements, the applicant must establish the date of his entry through competent, objective evidence. *Id.*

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 April 16, 2002 affidavit from [REDACTED] in which he stated that, to his personal knowledge, the applicant had lived in Los Angeles since January 1982. The affiant stated that he had known the applicant in Los Angeles for the last 20 years, but did not indicate his relationship with the applicant or the basis of his knowledge of the applicant's continued residency in the United States.
2. An April 16, 2002 affidavit from [REDACTED] in which he stated that, to his personal knowledge, the applicant had lived in Los Angeles since January 1982. The affiant stated that he had known the applicant in Los Angeles for the last 20 years, but did not indicate his relationship with the applicant or the basis of his knowledge of the applicant's continued residency in the United States.
3. An April 16, 2002 affidavit from [REDACTED] in which he stated that, to his personal knowledge, the applicant had lived in Los Angeles since March 1982. The affiant stated that he had known the applicant in Los Angeles for the last 20 years, but did not indicate his relationship with the applicant or the basis of his knowledge of the applicant's continued residency in the United States.

The applicant submitted no other documentation to establish his residency and presence in the United States during the requisite period. The affidavits submitted in support of the application do not place the applicant in the United States prior to 1982. Additionally, the affiants do not place their knowledge of the applicant in a context that gives credence and reliability to their statements. Accordingly, the applicant has not established by a preponderance of the evidence that he continuously resided in the United States during the requisite period.

The director also determined that the applicant's conviction of a felony renders him ineligible for admission into the United States. 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 record reflects that on April 5, 1994, the applicant was convicted in the Superior Court of California, County of Los Angeles, of inflicting corporal injury on a spouse, in violation of California Penal Code 273.5(a), a felony. The applicant was sentenced to 120 days in the county jail and three years of probation. On appeal, the applicant states that, as his conviction is over ten years old, he is eligible for his conviction to be set aside pursuant to California Penal Codes 1203.4 and 1203.4a. We note that section 1203.4 of the California Penal Code permits a defendant who has fulfilled the terms of his or her probation, to apply to have withdraw his or her guilty plea or conviction set aside. However, the applicant submitted no evidence that he had been granted, or has even applied for, relief under the aforementioned sections of the California statute.

Furthermore, an administrative action that allows a defendant to withdraw his plea and have the charge dismissed after he has successfully completed probation is still a conviction for immigration purposes. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

As the applicant has been convicted of a felony, he is inadmissible into the United States. Additionally, the applicant has not established that he continuously resided in an unlawful status during the qualifying period.

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