

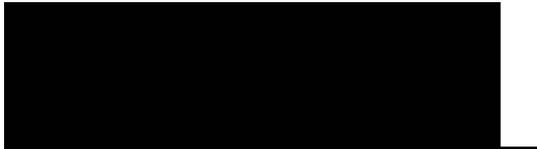
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U.S. Citizenship  
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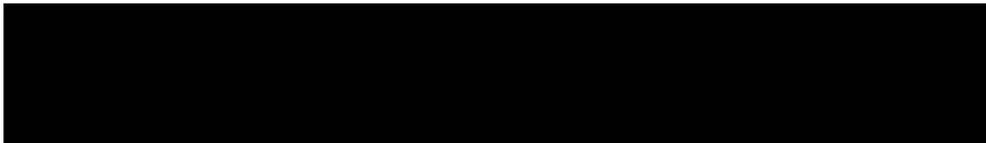
Office: LOS ANGELES

Date: **APR 17 2006**

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, 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.

On appeal, counsel argues that the denial of the application was erroneous, as it was based on the applicant's alleged failure to respond to the director's Notice of Intent to Deny (NOID).

The director issued a NOID dated November 4, 2005, advising the applicant that he had failed to submit sufficient evidence of his continuous presence and residence in the United States from prior to January 1, 1982, to May 4, 1988. The applicant was advised that he had 30 days in which to respond to the NOID. In her Notice of Denial dated December 21, 2005, the director stated that the applicant had failed to submit a response to the NOID.

On appeal, counsel states that the response to the NOID was hand-delivered to the district office, and submitted a copy of the response stamp-dated December 6, 2005. However, the stamp does not indicate that the response was received at the district office or by whom. Counsel submits a copy of the applicant's response on 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, the applicant stated that he last arrived in the United States on November 5, 1981, and that he had not left the United States at any time after January 1, 1982. The applicant also stated that he lived at [REDACTED] in Watsonville, California from November 1981 through the date of his Form I-687 application. The applicant identified a single employer in block 36 of his Form I-687 application: [REDACTED] in Watsonville, for whom he stated he worked from January to October 1982.

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

1. A December 23, 1989, sworn statement, indicating it was from the applicant's landlord; however, the signature is illegible. The document indicated that the applicant resided at [REDACTED] in Watsonville, California from November 1981 to October 1989, and that the landlord collected rent from him. The applicant submitted no evidence such as rent receipts or similar documentation to corroborate that he resided at the address indicated during the required period.
2. A December 23, 1989, affidavit from [REDACTED] in which she certified that the applicant had been her client "for the past eight years." The affiant did not indicate the nature of her business or the information that she relied upon in dating her business relationship with the applicant.
3. A December 23, 1989, affidavit from [REDACTED], in which she certified that the applicant came from her hometown in Mexico and had been in the United States "for several years." The affiant did not state when the applicant came to the United States or the basis of her knowledge of his presence and residence in the United States.
4. A December 26, 1989, sworn statement from [REDACTED] in which he certified that the applicant worked as a seasonal worker for [REDACTED]s from January 1982 to October 1989. [REDACTED] did not state his position with [REDACTED], but stated that the information was contained in the company's records. We note that the applicant indicated on his Form I-687 application that he worked for [REDACTED]s only from January to October 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).
5. A May 22, 2002, statement from [REDACTED], in which he stated that the applicant worked for him "beginning Jan. 1981, 1982 & 1983." It is unclear from [REDACTED]'s letter as to whether the applicant worked for him full time or on a part-time basis. Further, the letter does not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(i), which requires that letters from employers "must include" the alien's address at the time of his employment, exact period of employment, the applicant's duties with the company, and whether or not the information was taken from company records. Additionally, the applicant did not indicate on his Form I-687 application that he had ever worked for [REDACTED].

As discussed previously, the director issued a NOID dated November 4, 2005, which requested that the applicant submit additional evidence of continuous unlawful residence in the U.S. from January 1, 1982, through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986, through May 4, 1988.

In a December 3, 2005, statement, which counsel stated was in response to the NOID, the applicant declared that:

I entered the United States around January 1981 and that I came to live at [REDACTED] Lakeview, California 92567 with [REDACTED] who owned a trailer where he would let me stay and I worked with him cleaning houses and yards when available because work was seasonal. We also worked cutting trees and I cleaned his yard and he would pay me little money and would give me food and I did not pay rent and he would find work for me with his friends cleaning yards . . . I lived there until I moved to work for [REDACTED] at [REDACTED] in Perris, CA where I live since November 1989 to the present.

The applicant's statement contradicts his statement on his Form I-687 application and the December 23, 1989, statement of the landlord, in which both stated that he lived at [REDACTED] in Watsonville, California throughout the qualifying period. Additionally, the statement conflicts with the affidavits of [REDACTED] and [REDACTED], who stated that the applicant lived at [REDACTED] in Watsonville, California during their acquaintance with him.

The applicant's statement also conflicts with that of [REDACTED] who stated that the applicant worked for him until 1983. Additionally, as discussed previously, the applicant did not list [REDACTED] as an employer on his Form I-687 application, and does not identify his employment with [REDACTED] in his 2005 statement. The applicant submitted no competent and objective documentation to resolve these inconsistencies. 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 visa application. *Matter of Ho*, 19 I&N Dec. at 591-92. The applicant submitted no contemporaneous documentation to establish his residence in the United States from prior to January 1, 1982, through May 4, 1988.

Given the unresolved inconsistencies in the record and the absence of any contemporaneous documentation, it is concluded that the applicant has failed to establish continuous residence in the United States for the required period.

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