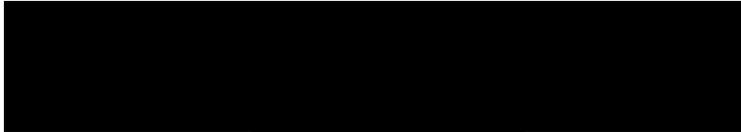


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY



L2

FILE:

MSC-02-250-66326

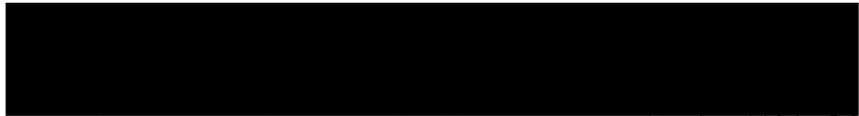
Office: LOS ANGELES

Date:

FEB 06 2008

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

A handwritten signature in black ink, appearing to read "D. King".

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. The applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO determined that the appeal was untimely filed and rejected the appeal. The applicant submitted additional evidence to establish that the appeal was timely filed. The AAO has reopened the decision *sua sponte*. The appeal will be dismissed.

The director determined that the applicant failed to establish by a preponderance of the evidence that he continuously resided and maintained his presence in the United States throughout the requisite periods. The director also stated that the applicant failed to respond to a request for evidence. Specifically, the applicant failed to provide a court disposition requested by the director. Since the director decided the application on the merits, the director is determined not to have denied the application due to abandonment.

On appeal, the applicant attempted to explain the difficulty of obtaining evidence as an immigrant who is in the United States unlawfully and after the passage of time. The applicant explained his use of an alias when he was apprehended by the police. He also stated that he is a different person now, and is married and has a new child.

An applicant for permanent resident status under Section 1104 of the LIFE Act 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. *See* 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 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation and its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The issue to be determined in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-485 Application to Register Permanent Resident or Adjust Status, to Citizenship and Immigration Services (CIS) on June 7, 2002. With this application, the applicant submitted a copy of Form I-687 Application for Status as a Temporary Resident, which he signed on August 2, 2006. At part #33 where applicants were asked to list all residences in the United States since first entry, the applicant listed only the following address: [REDACTED] from 1981 to 1988.

The applicant also provided multiple documents, some of which relate to the requisite period. The applicant provided an invoice from Nuclear Medicine Services in Riverside, California. This invoice is dated December 12, 1981. This invoice does not include the applicant's address. As a result, it does not confirm that the applicant resided in the United States during the requisite period. The invoice merely indicates the applicant was present in the United States on December 12, 1981.

The applicant provided a raffle ticket for an event in Los Angeles on June 5, 6, and 7, 1981, which includes the applicant's typewritten name. This tends to show the applicant was present in the United States sometime in the period between June 5 and June 7, 1981. However, because no address is listed for the applicant, the raffle ticket does not confirm he resided in the United States during the requisite period.

The applicant provided a rent receipt for the period from January 1, 1983 to January 30, 1983 and listing the applicant's name and address. This receipt is evidence that the applicant resided in the United States during January 1983.

The applicant provided a receipt from General Telephone of California listing his name and listing the date of November 16, 1985. This receipt does not include the applicant's address. As a result, it does not confirm that the applicant resided in the United States during the requisite period.

The applicant provided a letter from Bank of America dated December 20, 1986 and addressed to the applicant and another individual. This letter also does not include the applicant's address. As a result, it does not confirm that the applicant resided in the United States during the requisite period.

The applicant provided a letter from the State of California Franchise Tax Board dated June 20, 1989 and addressed to the applicant in the United States. This letter explains that the applicant's personal income tax is delinquent for the years 1986, 1987, and 1988. This letter indicates the applicant performed work in California sometime during the years 1986, 1987, and 1988. However, since the applicant could have been engaged in seasonal work during these three years, the letter does not confirm the applicant resided continuously in the United States during this time.

The applicant provided a copy of his Form 1099G Report of State Income Tax Refund addressed to him in the United States, listing the refund he was allowed during 1985 for the 1984 tax year. This document tends to show the applicant performed work in the United States during 1984, and that he resided in the United States at some time during 1985. This document does not confirm that the applicant resided continuously in the United States during 1984 or 1985.

The applicant provided a receipt from [REDACTED] in San Fernando, California. The receipt lists the applicant's name, but it does not include the applicant's address. As a result, it does not confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit dated April 30, 1990 from [REDACTED] in which the affiant stated that the applicant has resided in [REDACTED] from 1981 to the present time. The affiant stated that the applicant worked for the affiant as a gardener from 1981 until April 15, 1990. This declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records.

The applicant provided an affidavit from [REDACTED] in which the affiant stated that the applicant asked him to give the applicant a ride to the Mexican border on August 3, 1987. This affidavit tends to show the applicant was in the United States on August 3, 1987. However, it does not confirm that the applicant resided in the United States at any time during the requisite period.

In denying the application the director determined the applicant failed to establish by a preponderance of the evidence that he continuously resided and maintained his presence in the United States throughout the requisite periods.

On appeal, the applicant attempted to explain the difficulty of obtaining evidence as an immigrant who is in the United States unlawfully and after the passage of time. The applicant explained his use of an alias when he was apprehended by the police. He also stated that he is a different person now, and is married and has a new child.

In summary, the applicant has provided no contemporaneous evidence indicating he resided in the United States prior to January 1, 1982. The applicant provided multiple contemporaneous documents that failed to include his address and, therefore, do not confirm that he resided in the United States during the requisite period. The applicant provided evidence that he resided in the United States during January 1983 and at some time in 1985; and worked in the United States at some point during 1984, 1986, 1987 and 1988. The applicant provided attestations that do not

conform to regulatory standards or do not confirm his residence in the United States during the requisite period. Specifically, the affidavit from [REDACTED] does not conform to regulatory standards, and the affidavit from [REDACTED] does not confirm that the applicant resided in the United States at any time during the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible documentation that the applicant resided in the United States prior to January 1, 1982, and given the applicant's reliance upon documents with minimal probative value to demonstrate his residence for the remainder of the requisite period, 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 both 8 C.F.R. § 245a.11(b) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for permanent resident status under section 245A of the Act on this basis.

It is noted that the applicant is also ineligible for permanent resident status due to his having been convicted of three misdemeanors. To be eligible for permanent resident status under the LIFE Act, an individual must not have been convicted of any felony or of three or more misdemeanors committed in the United States. 8 C.F.R. § 245a.11(d)(1). The record indicates the applicant provided court documents related to three misdemeanors. These documents included a certified copy of the Minute Order of the Superior Court of the State of California, County of Ventura for Case [REDACTED] dated January 15, 2003; a certified copy of the Minute Order of the Superior Court of the State of California, County of Ventura for Case [REDACTED] dated January 21, 2003; and a certified copy of the electronic docket for the Municipal County of San Fernando Courthouse, Judicial County of Los Angeles, State of California, dated May 3, 2004. These documents indicate the applicant was convicted of the following three misdemeanors: Misdemeanor violation of Vehicle Code Section 23152(B) Driving Vehicle with .08% or More Alcohol Weight on January 6, 1993; misdemeanor violation of Penal Code Section 148.9(a) Giving False Information to a Police Officer on March 23, 2000; and misdemeanor violation of Penal Code Section 484(a) Petty Theft on May 2, 2000. The applicant provided the director with the above evidence indicating he was convicted of three misdemeanors. As a result of this evidence, the applicant is also determined to be ineligible for Permanent Resident Status based on having been convicted of three misdemeanors committed in the United States.

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