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FILE:

MSC 02 024 61505

Office: LOS ANGELES

Date: FEB 25 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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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. Wiemahn, 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 Administrative Appeals Office (AAO) rejected an appeal as untimely. The applicant, through counsel, asked the AAO to reopen, sua sponte, and submitted evidence to establish the appeal was timely. The AAO reopens, sua sponte, and will dismiss the appeal.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel asserts that the director erred in finding that the applicant failed to establish continuous residency in the United States from since before 1982 to May 4, 1988. Counsel indicated that a brief and/or evidence would be submitted to the Administrative Appeals Office (AAO) within 30 days.

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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.* at 80. 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 applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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.

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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the Notice of Intent to Deny (NOID), dated June 29, 2004, the director stated that the applicant failed to submit sufficient evidence to establish his claim of residency for the years 1985, 1986, and 1987 other than an affidavit from [REDACTED] of Siena Church. The director determined that the affidavits submitted were vague and lacked corroborating evidence. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence. In the August 19, 2004, Notice of Decision (NOD), the director stated that the applicant failed to submit a rebuttal to the proposed grounds for denial and denied the instant application.

The record reflects that counsel filed an appeal, date-stamped on September 23, 2004. The appeal was rejected as untimely filed. On December 5, 2007, counsel requested a Motion to Reopen and submitted evidence that the appeal was timely filed on September 20, 2004. As a result, the AAO has reopened the appeal sua sponte.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status in 1985, 1986 and 1987. Here, the submitted evidence is not sufficient.

As previously mentioned, in the NOD, the director stated that the applicant failed to submit a rebuttal to the proposed grounds for denial. However, the record reflects that on July 15, 2004, the applicant submitted additional evidence to rebut the director's grounds for denial. The applicant submitted the following evidence in support of his claim of residency during the years 1985, 1986 and 1987.

1. A photocopy of a Southern California Permanente Medical Group prescription note in the applicant's name, dated January 22, 1985, which indicates that the applicant had an appointment that morning.
2. A photocopy of a dental receipt from [REDACTED] in the applicant's name, dated January 16, 1986.
3. A photocopy of the applicant's California identification card, which was issued on April 9, 1980, and expired on April 6, 1986.
4. A photocopy of the applicant's California identification card, which was issued on February 25, 1987, and expired on April 6, 1992.

5. A photocopy of the applicant's California driver's license which was issued on February 25, 1983.
6. Photocopies of two envelopes sent to Mexico with the applicant's return address, post-marked in 1987 from Van Nuys, California.
7. Three sworn and subscribed affidavits of witness by [REDACTED] and [REDACTED], dated in 1989. All three affiants stated that the applicant resided in Canoga, California, from dates ranging from 1979 to 1989. All of the affiants provided their address of residence.
8. A July 26, 2001, notarized affidavit by [REDACTED] who stated that his sister and her husband, the applicant, resided with him and his family from 1979 to 1987 at [REDACTED] Canoga Park, California, and from 1987 to 1990 at [REDACTED] Reseda, California. The affiant provided his address of residence and telephone number.
9. A January 15, 2001, employment letter by [REDACTED] general manager of [REDACTED] Restaurant, who stated that the applicant worked as a dish washer at the restaurant from February 20, 1983, until February 1, 1988. A photocopy of [REDACTED]'s business card was attached to the letter.
10. A July 25, 2001, letter by [REDACTED] of [REDACTED], who stated that the applicant is a registered member of the parish and has lived in the area since 1984. The affiant provided the applicant's address of residence. The affiant also attached a parish offertory program envelope in the name of the applicant and his wife.
11. Immunization records of the applicant's daughter, [REDACTED], in 1984, 1985 and 1989.
12. A medical record of [REDACTED] dated January 7, 1987.

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 on November 27, 1989. In his Form I-687, the applicant indicated that he went to Mexico to visit his sick wife from August 1984 to September 1984. The applicant also indicated that his daughter was born on August 17, 1984, in Mexico. It appears that the applicant went to Mexico for the birth of his daughter in August 1984. The immunization records for the applicant's daughter indicate that she received her first and second series of immunization shots in October 1984 and December 1984. Although the applicant asserts that the immunization records prove his presence in the United States, the immunization records have minimal probative value on whether the applicant resided in the United States.

The Southern California Permanente Medical Group prescription note tends to prove that the applicant was in the United States in January 1985. The Victorian Dental Group receipt demonstrates that the applicant was in the United States in January 1986.

The applicant's California identification cards prove that the applicant was in the United States on the dates they were issued, April 9, 1980, and more importantly, on February 25, 1987. However, they do not prove that the applicant continuously resided in the United States during that time period. It is noted that the applicant's identification card expired April 6, 1986, but the applicant did not renew his identification card until February 25, 1987, approximately ten months later. While there is no explanation for the delayed renewal of his identification card, it does cast doubt that the applicant resided continuously in the United States during this time period.

The submitted envelopes, with the applicant's return address, tend to prove that the applicant resided in the United States in 1987.

The affidavits by [REDACTED] and [REDACTED] are fill-in-the-blank affidavits and are virtually identical with the exception of the affiant's information and a brief sentence regarding their relationship to the applicant. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. The affidavits provide minimal probative value.

While the affidavits by [REDACTED] and [REDACTED] appear to corroborate the above evidence and support the applicant's claim, there are discrepancies. The affidavit by [REDACTED] is inconsistent with the applicant's Form I-687. [REDACTED] stated that the applicant resided with him from 1979 to 1987 at [REDACTED] Canoga Park, California, and from 1987 to 1990 at [REDACTED] Reseda, California. However, on his Form I-687, the applicant stated that he resided at a different address from February 1983 to December 1987 [REDACTED] and from December 1988 to the 1989 [REDACTED]. These discrepancies cast doubt on the credibility of the affiant.

[REDACTED] stated that the applicant was employed from 1983 to 1988. However, when asked to list his employment in the United States since his first entry on his Form I-687, the applicant never indicated that he worked at the restaurant. Also, the affiant failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The discrepancy with the applicant's Form I-687 and the lack of details in the employment letter raises questions regarding the credibility of the affiant.

The letter by [REDACTED] stated that the applicant is a registered member of the parish and that the applicant has lived in the area since 1984. The affiant failed to show inclusive dates of membership, to establish how the author knows the applicant, and to establish the origin of the information being attested to as required under 8 C.F.R. § 245a.2(d)(3)(v). It is also noted that on the applicant's Form I-687, when asked to all list all affiliations or associations with clubs, organizations, churches,

unions, businesses, etc., the applicant did not indicate that he was a member of any church. This discrepancy and the lack of details in the Deacon's letter cast doubt on the credibility of the affiant.

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 record contains no independent objective evidence to explain the above discrepancies. These inconsistencies bring into question the credibility of the applicant, as well as the credibility of his affiants.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

The AAO finds that the submitted evidence demonstrates that the applicant resided in the United States in 1987 and for at least one day in 1985 and 1986. The submitted affidavits appear to support the applicant's claim continuous residence during the requisite period, but the affidavits are inconsistent with the applicant's own statements. The AAO does not find that there is sufficient credible, contemporaneous evidence to establish the applicant continuously resided in the United States in 1985 and 1986. The absence of sufficiently detailed and consistent documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 applicant's reliance upon documents with inconsistencies and 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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