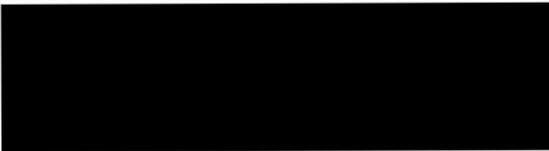


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FILE: [REDACTED]
MSC 02-225-61987

Office: SAN FRANCISCO

Date:

JAN 09 2008

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).

IN 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 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.

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, San Francisco, on September 12, 2006. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant, through counsel, submits additional documents as "proof of [his] eligibility."

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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 states 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 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

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). To meet his or her burden of proof, an

applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

In this case, on or about April 3, 1990 the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). On May 13, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status (I-485 LIFE Act Application).¹

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States since a date prior to January 1, 1982 through May 4, 1988. The applicant has provided the following evidence relating to the requisite period:

- Four affidavits from acquaintances, all dated in October 2006 and submitted in response to the director's decision issued on September 12, 2006. The affidavits are written on duplicate fill-in-the-blank forms in which each affiant states that he "has personally known and has been acquainted with [the applicant]" and that he personally knows that the applicant has resided in the United States in "Los Angeles CA from 1981 to 1994, Bay Point CA from 1994 to 2001, and Pittsburg CA from 2001 to 2006." Each affiant also attests to the applicant's good moral character. The places and dates of residence listed for the applicant are consistent with information provided by the applicant on his I-687 Application (see footnote 1). However, the affidavits are forms and lack details regarding the affiants' claimed 25-year relationship with the applicant. The affiants fail to indicate any personal knowledge of the applicant's entry to the United States or of the circumstances of his residence other than the cities where he resided. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements.
- An affidavit dated July 6, 2006, from [REDACTED] of Bay Point, California. Mr. [REDACTED] states that he has known the applicant since 1981 when [REDACTED] was living in Los Angeles and visited his best friend, [REDACTED], with whom the applicant was living at that time. The statement is consistent with information provided by the applicant on his I-687 Application and related interview, that his father's name is [REDACTED] and that the applicant lived with his father and his father's friends in Los Angeles from 1981 to 1987. As with the affidavits noted above, however, the affidavit lacks any details of a claimed 25-year relationship. The affiant does not indicate any personal knowledge of the applicant's entry to the United States or of the circumstances of his residence other than that he resided with [REDACTED] in Los Angeles. He fails to note that [REDACTED] is the applicant's father or that the applicant was a child when they first met or how or why the affiant maintained contact with the applicant. There is no evidence that the affiant resided in the United

¹ In addition to this I-485 LIFE Act Application, the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on January 5, 2006 (I-687 Application). As both applications were submitted and became part of the record prior to the director's decision of September 12, 2006, documentation accompanying both applications has been reviewed and considered by the AAO in deciding this appeal.

States during the requisite period and no details of any relationship that would lend credibility to the affidavit.

- An affidavit dated July 19, 2001, from the applicant's mother, [REDACTED]. She states that "we" reside at [REDACTED] Bay Point, California, and that the applicant "came to the United States the year 1981 at the age of nine years and has resided in the United States ever since. The father has [passed] on." There is no evidence that the affiant resided in the United States for the requisite period. The affiant provides no details regarding the circumstances of her son's entry into or residence in the United States, no explanation of where he resided, with whom, or how he survived as a child, and whether he attended school.
- Several envelopes addressed to the applicant at [REDACTED] in Los Angeles, one with a 1983 postmark from [REDACTED]; another with a 1986 postmark from [REDACTED] in Mexico, and others that are not relevant to the requisite period. These envelopes, apparently from his parents, detract from the credibility of the applicant's statements regarding his places of residence during the requisite period. During his interview in connection with his I-687 Application, the applicant claimed that he did not reside at the Newtonia address until 1987; and he claimed on the Form I-687 dated April 3, 1990, that he resided at [REDACTED], Los Angeles, from 1981 to 1987. The addresses on the envelopes and the dates and addresses of residence provided by the applicant are contradictory, and the envelopes can be afforded minimal probative value as a result.
- An affidavit dated April 2, 1990 from [REDACTED]. The affiant states that he is the custodian at [REDACTED], Los Angeles, and that he has personal knowledge that the applicant has resided in Los Angeles from 1981 to 1990 because "[they] were personal friends in Mexico and when [the applicant] arrived from Mexico he came to stay with [him]." As noted above, the applicant claimed to have resided at the Newtonia address beginning in 1987, or to have lived at the Sentinel address for the relevant period. This affidavit also fails to mention the applicant's father, although according to the applicant and [REDACTED] the affiant noted above, the applicant resided with his father when he arrived in the United States. In addition to these inconsistencies, the affiant fails to provide any details regarding his personal knowledge and his claimed friendship with the applicant, who was a child in 1981, and fails to provide any evidence that the affiant was in the United States for the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. All of the affidavits are bereft of sufficient detail to be found credible or probative; not one affiant indicates personal knowledge of the applicant's entry to the United States or how he lived and survived as a child in Los Angeles; the affiants provide inconsistent and contradictory information regarding the applicant's claimed dates and places of residence.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in February 1981, when he was nine years old, and resided in the United States for the requisite period with his father and his father's friends. As noted

above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions are not supported by any credible evidence in the record. Moreover, the places and dates of residence he provided at his interview and on his application forms are inconsistent and are actually contradicted by affidavits he has submitted.

The applicant has provided contradictory information regarding where he resided during the requisite period; although he claims to have resided in the United States since he was nine years old, he provided neither school records nor medical records nor an explanation of why they were unavailable. He also failed to provide any evidence from or about any responsible adult to indicate the circumstances of his travel to Los Angeles as a child or how he survived in Los Angeles during his childhood and throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.