



U.S. Citizenship  
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FILE:

MSC 02 235 61894

Office: LOS ANGELES

Date: **JAN 15 2008**

IN RE:

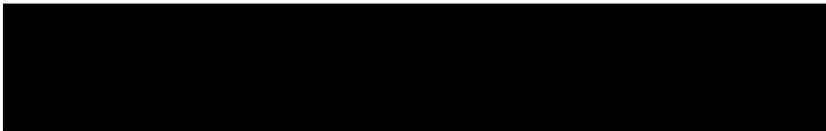
Applicant:



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. 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 District Director, Los Angeles, California, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. In a subsequent appeal to the Administrative Appeals Office (AAO), the application was remanded to the district office for issuance of a Notice of Intent to Deny (NOID) and a new decision. On remand, the director again denied the visa application and certified her decision to the AAO. The director's decision will be affirmed.

The director denied the application because the applicant failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel stated that the interviewing officer erroneously concluded that the applicant was required to complete a civics course at a state recognized, accredited learning institution in the United States prior to his second interview in order to meet the exception of 8 C.F.R § 245a.17.

The record did not reflect that the director issued a NOID prior to her decision. Therefore, the AAO remanded the record for the director to comply with the provisions of 8 C.F.R. § 245a.20(a)(2). On remand, the director reopened the decision on service motion and determined that the applicant had overcome the grounds set forth in the denial. The director, therefore, determined that the application should be reconsidered. Upon reconsideration, the director issued the applicant a NOID, advising the applicant that he 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 NOID, sent to both counsel and the applicant, was returned as undeliverable. According to postal records, neither the letter to the applicant or counsel could be forwarded to a new address. The director's decision of July 27, 2007 was also returned as undeliverable.

The record reflects that the director mailed her decision to the applicant and counsel at their addresses of record. As noted, the letters were returned by the postal service as undeliverable. The record does not reflect that the applicant notified Citizenship and Immigration Services (CIS) of a change of address, as required by 8 C.F.R. § 265.1. Accordingly, the record reflects that the applicant was properly served with notice of the director's intent to deny and subsequent denial of his visa application, and the AAO's decision will be based on the record as it is presently constituted.

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 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).

In a declaration to determine class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States in 1979, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant stated that his only absence from the United States was during July 1987, when he traveled to Mexico to visit his family. The applicant also stated that, during the qualifying period, he lived at the following addresses in Anaheim, California: [REDACTED] from October 1979 to February 1984, and [REDACTED] from February 1984 to June 1992. The applicant stated that he was self-employed in maintenance and landscaping from October 1979 to May 1988, and also worked for [REDACTED] (no city or state identified) doing maintenance work from March 1980 to April 1984. The applicant stated that he began working for [REDACTED] in Anaheim doing landscaping from May 1988 until the "present."

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 June 15, 1993 affidavit from [REDACTED], in which he stated that the applicant is his brother-in-law and that they lived together. He stated that the applicant had been in Anaheim, California since October 1979.
2. A June 15, 1993 affidavit from [REDACTED] in which he stated that the applicant had lived in Anaheim, California since October 1979. It is unclear as to the basis of the affiant's claimed knowledge of the applicant, as he merely stated that it was based on "in a house of a friend."
3. A June 15, 1993 affidavit from [REDACTED] in which he stated that the applicant had lived in Anaheim, California since October 1979. The affiant stated that his knowledge of the applicant was based on a "closed relationship," but did not identify the nature of that relationship.
4. A June 15, 1993 affidavit from [REDACTED] in which he stated that the applicant left the United States from Orange County in July 1987 and returned in the same month. The affiant did not state the basis of his knowledge of the applicant's travel to and from the United States. In a separate sworn statement of the same date, [REDACTED] certified that the applicant had been employed in landscaping at the [REDACTED] in Anaheim, California from May 1988. [REDACTED] identified himself as the maintenance manager of the [REDACTED]. However, his statement did not indicate whether the

information regarding the applicant's employment was taken from company records as required by 8 C.F.R. § 245a.2(d)(3)(i). Additionally, the statement did not specify the exact date the applicant began working for the inn, but stated that the applicant lived at [REDACTED] in Anaheim. We note that the applicant did not list this address on his Form I-687 application. In yet another affidavit of the same date, [REDACTED] stated that, to his personal knowledge, the applicant lived in Anaheim, California from May 1980 until the date of the affidavit. [REDACTED] stated that the applicant visited his brother and that they have maintained a friendly relationship since that date. In a May 7, 2002 affidavit, [REDACTED] stated that he and the applicant had been roommates in 1980 and lived together for a period of seven years. [REDACTED] did not state the residence at which he and the applicant resided. Further, he did not claim that he and the applicant lived as roommates in any of his earlier affidavits. Additionally, evidence submitted to establish [REDACTED]'s presence and residence in the United States during the requisite period indicate that he lived in Anaheim at [REDACTED] and [REDACTED] during this period. This applicant did not indicate that he lived at any of these addresses during the qualifying period.

5. A May 7, 2002 affidavit from [REDACTED] in which he stated that he met the applicant in November 1980, and that from November 1980 to October 1994, the applicant lived at [REDACTED] in Azusa, California. This statement is inconsistent with other statements in the record, indicating that the applicant lived in Anaheim throughout his residency in the United States.
6. A May 7, 2002 affidavit from [REDACTED], in which she stated that the applicant had lived in her house at [REDACTED], in Azusa, California from November 1980 through August 1994. This statement is inconsistent with other statements in the record, indicating that the applicant lived in Anaheim throughout his residency in the United States. Further, documentation submitted to establish [REDACTED] presence and residency during the qualifying period indicate that she lived at [REDACTED] and [REDACTED] in Azusa during this time frame.
7. A May 7, 2002 affidavit from [REDACTED], in which he stated that he became close friends with the applicant when they met through a mutual acquaintance in November 1980, and that from November 1980 to October 1994, the applicant lived at [REDACTED], in Azusa, California.
8. A May 7, 2002 affidavit from [REDACTED] in which he stated that he and the applicant "were roommates in 1980 for a period of 7 years." The affiant did not identify the address at which he and the applicant lived.
9. A June 15, 1993 affidavit from [REDACTED], in which he stated that, to his knowledge, the applicant had lived in Anaheim since February 1984. The affiant further stated, "He lived together in: [REDACTED]." It is unclear whether the affiant intended to state that he shared the residence with the applicant on [REDACTED]. Nonetheless, the applicant did not indicate that he lived at this address during the requisite period, but did state that in February 1984, he began living at [REDACTED], the same address claimed by the affiant as his own address. In a May 7, 2002 affidavit, [REDACTED] stated that he and the applicant were neighbors in November of 1980, and that they had remained friends since that time. The applicant submitted no evidence to explain the inconsistencies in [REDACTED]'s statements.

In this instance, the applicant has submitted twelve affidavits and third-party statements attesting to his continuous residence in the United States during the period in question. Affidavits in certain cases can

effectively meet the preponderance of evidence standard. However, the affidavits and statements submitted by the applicant are inconsistent with the statement of the applicant and with other evidence in the record. The applicant submitted no documentary evidence to resolve these inconsistencies. 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).

Furthermore, in removal proceeding before an immigration judge in 1999, and in a November 28, 2001 brief before the Board of Immigration Appeals, the applicant and his then counsel stated that the applicant first arrived in the United States in November 1988. Additionally, on a Form I-589, Application for Asylum and/or Withholding of Removal, which he signed on March 22, 1999, the applicant stated that he last arrived in the United States in November 1988. However, according to his Form I-687 application, the applicant's only absence from the United States after his initial entry was in July 1987.

Accordingly, given the unresolved inconsistencies in the record, it is determined that the applicant has failed to establish that he resided continuously in the United States during the required period.

**ORDER:** The director's July 27, 2007 decision is affirmed. The application is denied.