



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 131 61455

Office: LOS ANGELES

Date:

JAN 24 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 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 with a separate finding of fraud.

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 asserts that the evidence "paints a picture of an immigrant who" resided continuously in the United States from prior to January 1, 1982 through May 4, 1988 and was physically present from November 6, 1986 to May 4, 1988. Counsel submits a brief and copies of previously submitted documentation in support of the 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 a form to determine class membership, which he signed under penalty of perjury on June 7, 1990, the applicant stated that he first arrived in the United States in May 1981, 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 on June 7, 1990, the applicant stated that he lived at [REDACTED] in Van Nuys, California from December 1981 to June 1988; and at [REDACTED] from June

1988 to the date of filing the Form I-687 application. The applicant did not identify any employers in block 36 of the Form I-687, and entered "none" in block 34, which asked for affiliations with churches, clubs, or other organizations.

In a June 28, 1990 sworn statement, the applicant stated that since his entry into the United States, he had lived at [REDACTED] in Van Nuys, "always sharing the rent with different persons." In the next sentence, the applicant stated, "I always stayed at the managers room and he aloud [sic] me to stay because I used to help him doing some maintenance in the building and I never got receipts because I [was] always paid on [sic] cash." The applicant also stated that he worked for Mclean Mechanic Shop, which subsequently went out of business, and later on a part-time basis for [REDACTED]

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 7, 1990 statement from [REDACTED], in which she stated that the applicant had been living in the United States since May 1981, and that he left on November 29, 1987 to get married in Mexico. While [REDACTED] stated that she traveled to Mexico with the applicant for his marriage, she did not indicate the basis of her knowledge of the applicant's residency in the United States from May 1981. We note that while the statement indicates that it was attested to before a notary and contains a notary stamp, the notary did not sign the document.
2. A copy of a May 28, 1990 affidavit from [REDACTED] in which he stated that he had known the applicant's wife since her arrival in the United States in 1981, and that she had "always" lived with her husband. The affiant stated that the applicant and his wife had lived in Los Angeles from May 1981 unto the date of the affidavit. [REDACTED] also certified in an August 6, 2003 unsigned affidavit, that he met the applicant in May 1981, and that they worked together at [REDACTED]'s Body Shop for seven years. [REDACTED] failed to mention this employment in his May 1990 statement.
3. A June 20, 1990 sworn statement from Ernesto Linares, in which he stated that the applicant worked for McClean Body Shop from November 1981 to February 1988, and for [REDACTED]'s Auto Body as a contract mechanic's helper from February 1988 to the date of the statement. Mr. [REDACTED] stated that he had been the manager of McClean Body Shop. [REDACTED] stated that the applicant was paid in cash; however, he did not indicate the source of the information regarding the applicant's employment with either company and did not state the applicant's address at the time of his employment, as required by 8 C.F.R. § 245a.2(d)(3)(i).
4. A May 28, 1990 sworn letter from [REDACTED] who listed his address as [REDACTED] [REDACTED] Van Nuys and who stated that the applicant and his wife lived in [REDACTED] apartment from December 1981 to June 1988. [REDACTED] further stated that records existed only from April 1986 to June 1988 because when he became manager in 1986, the applicant and his wife were already living in the apartment. [REDACTED] did not state the basis of his knowledge of the applicant's tenancy in the apartment prior to 1986.
5. A copy of a money order receipt from Mercury Savings dated December 18, 1981, with the applicant's name at the bottom.

6. A June 4, 1990 letter from Our Lady Queen of Angels Church in Los Angeles, California, signed by its pastor, [REDACTED]. [REDACTED] certified that the applicant had been a member of the church since 1981. While the letter identified the applicant's address at the time of the letter, [REDACTED] did not identify any prior residences of the applicant and did not indicate the source of the information regarding the applicant's membership. 8 C.F.R. § 245a.2(d)(3)(v). Additionally, on his Form I-687 application, the applicant denied any association or affiliation with a church or other organization during the qualifying period.
7. A copy of a May 5, 1983 money order receipt from Mercury Savings with the applicant's name at the bottom. The year in the date appears to be in a different writing than the month and year.
8. A copy of an envelope addressed to the applicant at [REDACTED] in Van Nuys. The postmark date of the envelope is illegible; however, notes in the record indicate that the postmark is 1983. Further, the apartment number appears to be 10. We note that the applicant claimed to have lived at [REDACTED] at this time, and stated that, when he moved to [REDACTED] he lived in apartment 9.
9. A copy of a money order receipt dated May 20, 1985, showing the applicant's name and an address of [REDACTED] in Van Nuys.
10. A copy of a receipt from the "home shop," a store in California. The receipt is dated April 14, 1986. However, the year appears to have been altered.
11. A copy of a money order receipt dated April 13, 1987, showing the applicant's name and an address of [REDACTED] in Van Nuys.

In response to the director's Notice of Intent to Deny (NOID) issued on December 20, 2004, the applicant submitted an unsigned, undated letter from the applicant's wife, in which she stated that she came to the United States with the applicant, then her boyfriend, and that they lived at [REDACTED] in Van Nuys. She further stated that they lived with different persons, sharing their apartments, from 1981 to 1986, and that the people with whom they lived were all managers of the building and therefore there were no leases or rental receipts.

In a letter accompanying the applicant's response to the NOID, counsel stated that as the applicant and his then girlfriend, [REDACTED], came to the United States together, affidavits and letters submitted to establish her presence and residence in the United States are also evidence to establish the applicant's presence and residency in the United States. However, most of the evidence in those letters does not indicate that the writer also knew the applicant, and the applicant and his wife's unsupported statements that they arrived together are not sufficient evidence to establish their arrival in the United States in May 1981, or that they arrived together. Pertinent documentation submitted in response to the NOID include the following:

1. A May 28, 1990 affidavit from [REDACTED] in which he stated that he had known the applicant's wife since 1986, when he became manager of the apartment building. [REDACTED] stated that neighbors told him that the applicant's wife had been living "there" since December 1981. We note that the affiant did not state that the applicant and his wife shared an apartment with him.

2. A January 16, 2005 notarized letter from [REDACTED] in which she again stated that she had known the applicant since May 1981, and that they were neighbors at [REDACTED] Apartment Complex from May 1981 through 1990. The applicant stated on his Form I-687 application that he moved to 7024 Woodley in June 1988.
3. A January 17, 2005 sworn letter from [REDACTED], in which he again stated that he had known the applicant since 1981, and that the applicant worked under his supervision at [REDACTED]'s Auto Body Shop. [REDACTED] did not state when he became the applicant's supervisor; however, he stated that the applicant "worked on a full time basis including Saturday until 1988." This contradicts the applicant's statement in his June 28, 1990 sworn statement that he worked for [REDACTED] on a part-time basis.
4. A January 17, 2005 sworn letter from [REDACTED] in which she stated that she had known the applicant and his wife since they arrived in the United States in May 1981. She further stated that the applicant lived at [REDACTED] during this period.
5. A January 17, 2005 sworn letter from [REDACTED] in which he again stated that he had known the applicant since 1981, and that the applicant "worked around 1981 in [REDACTED] business of auto body repair. [REDACTED] further stated that the applicant worked as an apprentice, doing basic chores "at the beginning," earned minimum wage, and worked full time including Saturdays. [REDACTED] stated that the applicant lived at [REDACTED] during this period. This statement contradicts that of the applicant, in which he stated that he worked for Mr. [REDACTED] on a part-time basis. [REDACTED] again did not state the source of his information regarding the applicant's employment.
6. A copy of a November 21, 1984 receipt for rent for "Apartment [REDACTED]". The receipt, signed by "Patel" and showing the applicant as the remitter, does not indicate an address. This receipt contradicts the statements of the applicant's wife, who stated that they did not receive rent receipts. It further contradicts the statement of the applicant, who stated that he was allowed to stay in the manager's apartment in exchange for helping with the maintenance work. Additionally, the applicant did not claim to have lived in an "apartment 4" during the qualifying period.
7. A copy of a rent receipt signed by [REDACTED] dated October 3, 1986, for "Apartment [REDACTED]". The receipt, which shows both the applicant and his wife as the remitters, does not indicate a street address, city or state. The receipt also contradicts the statement of the applicant and his wife in the same manner as discussed immediately above.

A review of the record reflects that the applicant's wife submitted fraudulent documentation in support of her LIFE application. For example, a consent form from the Van Nuys Health Center indicates that it was allegedly signed on October 2, 1986; however, the date of the form is July 1989. Additionally, a "cashier referral" from the Olive View Medical Center was allegedly signed on January 24, 1987; however, the date of the form is September 1990, and a medical consent form from the Olive View Medical Center was allegedly signed on May 4, 1986. However, the form shows a revision date of July 1988. Because these forms were also submitted in support of the applicant's application and because dates on two receipts also appear to be altered, the AAO issued a request for evidence (RFE) dated March 23, 2007, in which it requested that the applicant submit the originals of all receipts of purchase orders and money orders that he submitted in support of his application.

In his letter accompanying the applicant's response to the RFE, counsel stated that the applicant submitted all of the originals that he could locate. However, the documentation submitted by the applicant was not responsive to the AAO's request. The applicant submitted only one document, the October 3, 1986 rent receipt signed by [REDACTED] that he had submitted with his application. Nonetheless, the applicant submitted the following additional documentation:

1. A July 10, 1981 card containing the applicant's name. The card, written in Spanish, does not contain an address or any other evidence that would establish the applicant's presence and continued residence in the United States during the required period.
2. A "cashier referral" from the Olive View Medical Center for the applicant allegedly dated March 17, 1982. However the date of the form is September 1990.
3. A General Consent Form from the City of Los Angeles Department of Social Services, purportedly signed on April 21, 1982. However, the dates of the form indicate that it was issued in August 1989 and June 1991.
4. A receipt signed by [REDACTED] for "TBRAP" issued to the applicant and his wife, allegedly on June 21, 1982. However, the year has been altered from 2002.
5. A receipt for "TBRAP" issued to the applicant and his wife. The receipt is allegedly dated December 26, 1982. However, the year has been altered from 2002.
6. A receipt from Radio Shack dated January 18, 1983 showing the applicant as a customer with an address of [REDACTED] in Los Angeles. The applicant did not state that he lived at this address at any time during the qualifying period.
7. A receipt from Snap-on Tools dated July 6, 1983, issued to the applicant with an address of [REDACTED] in Van Nuys.
8. A prescription from Olive View Medical Center for the applicant. The prescription shows an obvious alteration in the date to March 17, 1984, and the date of the form shows a revision date of February 1987.
9. A receipt on a rent receipt pad indicating that it is for a physical and showing the applicant as the remitter. The receipt is dated November 22, 1984; however, the year has been altered from 2004.
10. A receipt dated July 29, 1985 issued to the applicant and his wife. The receipt does not show the purpose of the receipt or readily identify the creditor receiving the payment.
11. A carbon copy of a check written by the applicant showing his address as [REDACTED] Apartment 8 in Van Nuys. The check was allegedly written on June 18, 1985. However, the date of the form is June 1990.
12. A rent receipt dated August 1, 1987 issued to the applicant and his wife and signed by [REDACTED]. The receipt shows that it is for Apartment 26 but does not otherwise identify the location of the apartment.

The record therefore indicates that the applicant submitted evidence in support of his application consisting of fraudulent receipts and medical documents.

On October 11, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the applicant of derogatory information. Specifically, the AAO notified the applicant that he had submitted fraudulent documentation in support of his application.

The AAO's notice stated:

On March 23, 2007, the AAO issued you a request for evidence (RFE) in which you were requested to submit the originals of all receipts of purchase orders and money orders that you submitted in support of your application. However, the documentation you submitted was not responsive to the AAO's request. Nonetheless, you did submit additional documentation consisting of, among other things, "cashier referral" forms from the Olive View Medical Center, a medical consent form from the Los Angeles County Department of Social Services, and a carbon copy of a personal check. While each of these forms purport to have been signed during the qualifying period, each shows that the date of the form was no earlier than 1989. Additionally, receipts issued to the applicant for "TRAP" allegedly dated in 1982, reveal that the dates have been altered from 2002. Another receipt, indicating that it was for a "physical" and purportedly dated in 1984 reveals that the date has been altered from 2004.

Other documentation submitted in support of your application includes medical documentation pertaining to the your wife. This documentation includes a consent form from the Van Nuys Health Center, which indicates that it was allegedly signed on October 2, 1986; however, the date of the form is July 1989. Additionally, a "cashier referral" from the Olive View Medical Center was allegedly signed on January 24, 1987; however, the date of the form is September 1990. A medical consent form from the Olive View Medical Center was allegedly signed on May 4, 1986. However, the form shows a revision date of July 1988.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that you have manufactured documentation in support of your visa application. For this reason, we cannot accord any of your other claims any weight.

If you choose to contest the AAO's findings, you must offer substantial evidence from credible sources addressing, explaining, and rebutting the discrepancies described above. The regulation at 8 C.F.R. § 103.2(b)(16)(i) does not specify the amount of time afforded to an applicant or petitioner to respond to derogatory evidence. We consider thirty (30) days to

be ample time for this purpose. Therefore, you are hereby afforded 30 days from the date of this letter in which to respond to this notice. If you do not submit such evidence within the allotted thirty-day period, the AAO will dismiss your appeal.

Because so much of the derogatory information concerns falsified documents, we will obviously not accept any photocopied documentation as evidence to overcome the above derogatory information. Pursuant to 8 C.F.R. § 103.2(b)(5), we have the discretion to request the originals of any photocopies submitted. We reiterate that, pursuant to *Matter of Ho, supra*, you cannot overcome the above findings simply by offering a verbal explanation.

On November 8, 2007, counsel requested an additional 120 days in which to respond to the AAO's NOID. By facsimile transmission of November 14, 2007, counsel was granted an additional 30 days to respond to the NOID. By letter dated December 12, 2007, counsel again requests additional time in which to respond to the request, stating that it is "quite difficult to obtain documentary proof on matters almost twenty years old," and that employees of agencies such as Olive View Medical Center, Van Nuys Health Center and the Los Angeles County Department of Social Services "do not have the time to respond within the time frame" given.

Counsel submits a copy of a November 7, 2007 letter to Olive View Medical Center, requesting clarification of the numbers and dates of the forms submitted by the applicant. Although counsel submitted documentation from his paralegal indicating that this information was also requested from the Van Nuys Health Center, counsel submitted no letter corroborating the request.

Notwithstanding counsel's efforts with Olive View Medical Center and Van Nuys Health Center, the applicant has offered no competent or objective evidence to explain the obvious alterations in the dates on the receipts issued to the applicant for "TRAP" (from 1982 to 2002) and for a "physical" (from 1984 to 2004).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

The applicant signed the Form I-485, thereby certifying under penalty of perjury that "this application and the evidence submitted with it are all true and correct."

By filing the instant application and submitting the fraudulent receipts and prescription, the applicant has sought to procure a benefit provided under the Immigration and Naturalization Act (the Act) using fraudulent documents. An applicant for permanent resident status under the provisions of the LIFE Act must establish that he or she is admissible as an immigrant. Section 1104(c)(2)(D)(i) of the LIFE Act. Because of his attempt to procure a benefit under the Act through fraud, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established his eligibility for the requested immigrant visa classification.

Regarding the instant application, the applicant's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the applicant and the remaining documentation. As stated above, 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 application. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. In addition, because he has attempted to procure a benefit under the Act through fraud, he is inadmissible under section 212(a)(6)(C) of the Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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