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FILE: [REDACTED]  
MSC 02 186 62014

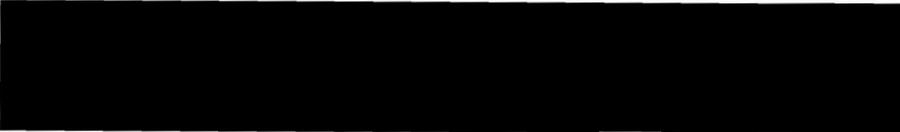
Office: LOS ANGELES

Date: JAN 31 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).

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. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 such date through May 4, 1988.

On appeal, applicant asserts that although he entered in 1981, he was instructed by his immigration consultant to use March 1987 as his date of entry. Applicant asserts that he gave the immigration consultant his documentation from 1981 to 1987, but the evidence was never returned to him. Applicant contends that he is the victim of immigration fraud.

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.* 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 (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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States since before January 1, 1982, and continuously resided in an unlawful status through May 4, 1988. Here, the submitted evidence is not sufficient.

In the Notice of Intent to Deny (NOID), dated March 29, 2005, the director stated that the applicant failed to establish that he entered the United States prior to January 1, 1982. The director noted that the inconsistencies between his applications, oral testimony and evidence called into the applicant's credibility. Specifically, the director noted that the applicant stated he first came to the United States in 1981. However, during his deportation hearing on September 23, 1999, the applicant stated he first came to the United States in 1987. The applicant also stated that he first entered the United States in 1987 on his EOIR-40 form and G-325A form. It is noted that the record does not contain the EOIR-40 form or G-325A form mentioned by the director. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

In the Notice of Decision (NOD), dated September 29, 2005, the director stated that the applicant failed to submit a rebuttal to the proposed grounds for denial. The director denied the instant application based on the reasons stated in the NOID.

On appeal, applicant does not dispute the fact that he stated March 1987 as his date of entry on his EOIR-40 form or G-325A form. However, he contends that although he entered in 1981, he was instructed by his immigration consultant, [REDACTED] to use March 1987 as his date of entry. Applicant further asserts that he gave [REDACTED] all of his documentation from 1981 to 1987. He later discovered that [REDACTED] was one of ten offices that had committed immigration fraud. He states that his documents were never returned to him. There is no indication in the record to establish that the applicant was represented by [REDACTED] and that [REDACTED] was convicted of immigration fraud. Thus it cannot be concluded that the applicant was the victim of immigration fraud.

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). In one instance the applicant stated that his date of entry was in 1981; whereas in another instance he stated 1987. The record contains no independent objective evidence to explain this discrepancy.

To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The record contains one employment letter and four affidavits in support of the applicant's claim.

### Employment Letter

The record contains an undated letter by [REDACTED] on [REDACTED] letterhead, which indicates that the applicant was employed by the company from October 1981 to September 1988. The affiant provided the company's address and telephone number. The affiant failed to provide the applicant's address at the time of employment, show periods of layoff, state the applicant's duties, 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 absence of the required information casts doubt on the credibility of the affiant.

### Affidavits

The record contains four affidavits in support of the applicant's claim.

1. An April 4, 1990, subscribed and sworn affidavit by [REDACTED] who stated that she has known the applicant since October 1981. The affiant stated that she met the applicant at a friend's house and they have been friends ever since. The affiant provided her address and telephone number. The affiant also provided another affidavit which stated that the applicant lived at [REDACTED] in Los Angeles, from October 12, 1981 to July 1987. She further stated that the applicant paid a rent of \$50.00 per week.
2. An April 11, 1990, subscribed and sworn affidavit by [REDACTED] who stated that he cohabited with the applicant from July 1987 to 1990 at [REDACTED] Inglewood, CA. The affiant stated that all the bills were paid in his name and the applicant contributed his share of the monthly expenses in cash.
3. A January 14, 2004, subscribed and sworn affidavit by [REDACTED], who stated that she has known the applicant since 1984. She stated that the applicant and her father had been very good friends and since her father's death, the applicant and his family have remained very close friends with her family.
4. A January 20, 2004, subscribed and sworn affidavit by [REDACTED] who stated that he has known the applicant since 1983. The affiant stated that the applicant helped him clean and

organize his shop when it first opened. The affiant provided his address of residence and telephone number.

The applicant has not provided any credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. Both affiants, [REDACTED] and [REDACTED] stated that the applicant lived with them but failed to provide any supporting documentation to corroborate their statements, such as rent receipts, rental agreement, etc. The affidavits of [REDACTED] and [REDACTED] lack specific details which would lend more credibility to their statements. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States or of their relationship with the applicant.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed and supported 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 minimal probative value, as well as the discrepancy over his date of entry, 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 the requisite period.

Beyond the decision of the director, the record indicates that on August 25, 1992, the applicant was charged with *carrying a concealed weapon vehicle*, in violation of section 12025(a) of the California Penal Code in the Municipal Court of Inglewood Judicial District (Cause No. [REDACTED]). On August 26, 1992, the applicant was convicted of *carrying a concealed weapon vehicle*, a misdemeanor conviction. The applicant was sentenced to summary probation for a period of two years, imprisonment in the Los Angeles County Jail for two days, and a fine of \$648.00. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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.