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**U.S. Citizenship
and Immigration
Services**

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FILE:



MSC-03-252-60866

Office: LOS ANGELES

Date:

JUL 02 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 for the reasons expressed in the Notice of Intent to Deny. Specifically, she found that the documents submitted by the applicant do not establish that he entered the United States before January 1, 1982 and resided in a continuous unlawful status since that date through May 4, 1988. The director also stated that the applicant had failed to provide complete records regarding his arrest, as requested.

On appeal, the applicant stated that the court disposition of his arrest was destroyed, as no charges were brought against him. The applicant also stated that he believes the evidence he submitted in support of his residence in the United States is sufficient.

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 and through May 4, 1988. *See* Section 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of Section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation and its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

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).

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 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 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.

The first issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-485 Application to Register Permanent Resident or Adjust Status, to Citizenship and Immigration Services (CIS) on June 9, 2003. The applicant submitted four attestations in support of his application. The affidavits dated June 20, 1991 from [REDACTED], and [REDACTED] and the affidavit dated June 28, 1991 from [REDACTED]

each state that the applicant resided in Los Angeles, California from 1981 to present. None of these affidavits provide detail regarding the date and context in which the affiant met the applicant, their frequency of contact, and whether the applicant was absent from the United States during the requisite period. Therefore, these attestations are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided an affidavit dated June 28, 1991 from [REDACTED] which states that the applicant worked for the affiant as a sub-contractor from 1981 to present. This affidavit fails to include detail regarding the nature of the work performed by the applicant, the location and frequency of the work, how the applicant was paid, or whether the affiant has records of his employment of the applicant. Therefore, this affidavit is also found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director found that the applicant failed to establish that he entered the United States before January 1, 1982 and resided in a continuous unlawful status since that date through May 4, 1988.

On appeal, the applicant stated that the court disposition of his arrest was destroyed, as no charges were brought against him. The applicant also stated that he believes the evidence he submitted in support of his residence in the United States is sufficient.

In summary, the applicant has submitted four attestations that lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988 as required under both Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The second issue in this proceeding concerns whether the applicant failed to provide the requested documentation for his arrest in 1990 and, as a result, whether he failed to establish his admissibility as an immigrant. An FBI identification record dated March 18, 2006 indicates that the Los Angeles Police Department arrested the applicant on October 29, 1990 and charged him with *theft of personal property*.

The record shows that the applicant indicated on the Form I-687, which he signed under penalty of perjury on June 28, 1991, that he had not been arrested. The applicant also initially indicated on his Form I-485 application that he had never been arrested for breaking or violating any law or violation, excluding traffic violations. The record indicates that the Form I-485 application was modified by the immigration officer at the applicant's request during his interview on November 6, 2006 to show that the applicant had been arrested.

On November 6, 2006, the director issued a Form I-72 request to the applicant to provide final original court certified dispositions of his arrests. The applicant submitted a letter dated November 13, 2006 from the Superior Court of California, County of Los Angeles, stating that the indexes from July 26, 1977 to November 13, 2006 were examined and no record was found of an action naming the applicant.

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(ii). The applicant must not only show that the requested evidence is unavailable but also submit relevant secondary evidence of the arrest. If secondary evidence is unavailable, then the applicant must submit at least two affidavits from persons who are not party to the application and who have direct knowledge of the event and circumstances, such as the prosecuting attorney, defense attorney, etc. The applicant has not provided secondary evidence or affidavits of the arrest.

In addition, any letter that is submitted to show that a criminal record is unavailable must be an original, on letterhead, and from the relevant government authority that serves as the custodian of records. 8 C.F.R. § 103.2(b)(2)(ii). The government letter must indicate the reason the record does not exist and whether similar records for the time and place are available. It is noted that the applicant has provided evidence to demonstrate that a records search was conducted by appropriate parties in the Superior Court of California. However, the letter is not an original document, and it does not indicate the reason the record does not exist or whether similar records for the time and place are available.

Furthermore, Section 1104(c)(2)(D) of the LIFE Act provides that the applicant "must establish that he is (i) is admissible . . . and (ii) has not been convicted of any felony or 3 or more misdemeanors." Based on the record, the applicant has a criminal history and has been asked to provide evidence regarding his criminal arrest. A letter stating that the required evidence is unavailable, regardless of who wrote the letter or the reasons for unavailability, does not establish that the applicant "has not been convicted" of the offense in question. As the applicant has merely submitted a letter of unavailability, and he has failed to submit secondary evidence or affidavits, the applicant has not met the requirements of 8 C.F.R. § 103.2(b)(2)(i) and (ii). Accordingly, the applicant has not met his burden of proof.

Therefore, based on the above discussions, the applicant failed to establish continuous unlawful residence in the United States since before January 1, 1982, through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. The applicant has also failed to establish his admissibility as an immigrant and provide the requested documentation for his criminal arrest. 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.