



U.S. Citizenship
and Immigration
Services

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[REDACTED]

LL

FILE: [REDACTED]
MSC 02 161 61749

Office: SAN FRANCISCO

Date: JUL 02 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:

[REDACTED]

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.

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

The district director denied the application because the applicant failed to demonstrate 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, counsel asserts that the director abused his discretion in finding that the applicant failed to meet his burden under the LIFE Act.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet his burden.

In support of the applicant's claim, the record contains three declarations that fall within the relevant statutory period. The record contains declarations from [REDACTED] and [REDACTED]. Mr. [REDACTED] stated that he met the applicant in 1980. Mr. [REDACTED] stated that he has known the applicant since 1983. Mr. [REDACTED] stated that he met the applicant in 1982. None of the declarants stated that they met the applicant in the United States. None of the declarants stated that the applicant continuously resided in the United States during the statutory period. Mr. [REDACTED] indicated that he rented a small studio to the applicant and his wife in 1988, but he failed to state the exact date. There is nothing in the record to indicate that it occurred within the statutory period. In addition, there is nothing in the record to indicate that the affiants resided in the United States during the statutory period. The declarations do not provide sufficient probative value.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed declarations 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.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 applicant's reliance upon documents with insufficient probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Beyond the decision of the director, the AAO notes that the applicant has failed to provide the requested documentation in response to the director's Intent to Deny – Request for Evidence (RFE), dated January 15, 2003. In the RFE, the director requested the applicant submit a copy of arrest records and certified final dispositions of all arrests. The director granted the applicant ninety (90) days to submit the requested documentation. The applicant failed to submit this documentation.

In response to the RFE, counsel stated that the applicant had never been convicted of any crimes, and the applicant provided an October 2002 letter from the Superior Court of California stating that no criminal case was found and that misdemeanor records are purged after 10 years.

The record contains an FBI identification record indicating that on December 8, 1989, the applicant was arrested and charged with *unlawful taking of vehicle* by the Redwood City Sheriff's Office, a violation of section 10851 of the California Vehicle Code. Section 1104(c)(2)(D) of the LIFE Act provides that the alien "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. The applicant did not submit the requested documentation and, therefore, has failed to meet his burden.

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.