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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[Redacted]

FILE: [Redacted] Office: LOS ANGELES Date: **JUL 11 2008**
MSC 02 249 61175

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:

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.

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.

The district director determined that the applicant had been convicted of three or more misdemeanors and therefore, pursuant to 8 C.F.R. § 245a.18(a), was ineligible for adjustment to lawful permanent residence status under the LIFE Act. The director also determined that the applicant had not demonstrated that he had entered the United States prior to January 1, 1982, and continuously resided in an unlawful status since such date and through May 4, 1988.

On appeal, the applicant states that due to his nervousness and lack of memory, he answered questions incorrectly. The applicant submits a statement and additional documentation in support of the appeal.

The applicant's criminal record history reveals the following:

1. On July 23, 2001, the applicant was convicted in the Superior Court of California, Metropolitan Courthouse Division, of unlawful obstruction of a peace officer, in violation of California Penal Code section 148(a)(1). He was sentenced to two days in jail, ordered to pay a restitution fine of \$100, and placed on 12 months probation. Case no. [REDACTED]
2. On December 6, 2004, the applicant was convicted in the Superior Court of California, Long Beach Courthouse Division, of possession of under one ounce of marijuana, in violation of California Health and Safety Code section 11357(b). He was fined \$100. Case no. [REDACTED]
3. On June 8, 2006, the applicant was convicted in the Superior Court of California, Long Beach Courthouse Division, of failure to notify following an accident. He was placed on three years summary probation and fined \$300. Case no. [REDACTED]

The record, therefore, reflects that the applicant was convicted of three misdemeanors. The regulation at 8 C.F.R. § 245a.18 provides:

(a) *Ineligible aliens.* (1) An alien who has been convicted of a felony or of three or [more] misdemeanors committed in the United States is ineligible for adjustment to LPR status under this Subpart B.

In response to the director's Notice of Intent to Deny (NOID) dated September 2, 2006, the applicant explained the circumstances surrounding his arrests and convictions. However, he did not deny that he was convicted of the offenses. The applicant does not address this issue on appeal.

Accordingly, as the applicant has been convicted of at least three misdemeanors, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

The director also determined that the applicant had failed to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988.

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 his form to determine class membership, the applicant stated that he first arrived in the United States in May 1981, when he crossed the border without inspection. The applicant, who was born on April 3, 1980, was a year old at the time. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on June 20, 1990, the applicant stated that he lived in San Diego, California from May 1981 to June 1982; at [REDACTED] in Long Beach, California from July to December 1982; at [REDACTED] in Long Beach from January 1983 to October 1984; at [REDACTED] in Long Beach from November 1984 to June 1987; and at [REDACTED] in Long Beach from July 1987 to the date of his Form I-687 application. The applicant indicated that he did not work during the qualifying period.

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 copy of a June 18, 1990, affidavit from [REDACTED] in which she stated that the applicant's mother is her sister. The affiant stated that her sister and her two children came to live with her in May 1981, and lived with the affiant for about a year before moving to Long Beach.

2. A copy of an envelope with a June 17, 1982, postmark, showing the applicant's mother as the sender with an address of [REDACTED] in Long Beach.
3. A copy of his brother's elementary school records from the Long Beach Unified School District, showing that he entered school in the district on September 13, 1984.
4. A copy of his brother's State of California immunization record, showing entries in 1984, 1985 and 1986.
5. A copy of the applicant's brother's test scores from Barton school in Long Beach, California for May 1985 and from Kettering School in May 1988.
6. A copy of his State of California immunization record, with entries by the Long Beach Health Department in 1986, 1987 and 1988.
7. A copy of a September 25, 1986, letter from the Long Beach Unified School District assigning the applicant to Emerson Elementary School.
8. A copy of his elementary school record from Long Beach Unified School District showing that he entered school in October 1986.
9. A copy of his report cards from Emerson and Kettering Elementary Schools for the school years 1986-1987, 1987-1988, and 1988-1989.
10. A copy of a November 28, 1987, rental receipt for the applicant's mother, for rent at 4 [REDACTED]
[REDACTED]

The applicant submitted a [REDACTED] 1990, letter from [REDACTED] in which he stated that he is married to the applicant's aunt. Mr. [REDACTED] stated that his sister-in-law resided with him from 1981 to until 1982. However, [REDACTED] did not state where he lived at the time and did not state that the applicant resided with his mother. Other documentation submitted by the applicant is subsequent to May 1988, and therefore do not provide evidence of his presence and residence in the United States during the qualifying period.

The director denied the application, in part, because the applicant stated during his interview that he first entered the United States in 1985 or 1986 and first attended school when he was in the fourth grade. On appeal, the applicant states that he misunderstood the question that was asked and responded to what he thought the question was. He resubmits copies of documentation indicating that he attended Emerson Elementary School during the 1986-87 school year, and was in the fourth grade at Kettering Elementary School during the 1989-90 school year. The applicant also resubmits a copy of the June 18, 1990, affidavit from his aunt, [REDACTED]

The applicant has submitted insufficient proof to establish that he entered the United States prior to January 1, 1982, and resided in an unlawful status throughout the qualifying period. Specifically, the applicant's evidence does not sufficiently demonstrate that he was residing in the United States prior to 1984. The applicant's evidence to establish residence prior to 1984 consists of a single affidavit from his mother's sister

stating that the family lived with her for a year from 1981 to 1982, and an envelope with a June 1982 postmark bearing a return address for his mother in Long Beach. 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.

The affidavit from [REDACTED] does not provide an address at which she lived when the applicant and his family came to live her, and the applicant submitted no other documentation to corroborate that he or the affiant lived in Long Beach at the time indicated. Additionally, while the envelope with the 1982 postmark shows the presence of the applicant's mother in the United States in 1982, it does not establish that she or the applicant resided in the United States at that time. The applicant's evidence does not establish by a preponderance of the evidence that he continuously resided in the United States in an unlawful status throughout the requisite period.

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.