

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY

L2



FILE: [Redacted] MSC 03 248 62003

Office: LOS ANGELES

Date: JUN 27 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: 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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he qualifies for the benefit being sought as he entered the United States in August 1981 and has resided in an unlawful status since that date until his departure on May 14, 1987, from the United States due to the death of his father.

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. 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 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 continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

According to the interviewing officer's notes, the applicant claimed that he entered the United States in 1981 with a B-2 non-immigrant visa.

In a Notice of Intent to Deny dated August 31, 2006, the applicant was advised of the statement made at the time of his LIFE interview that he had entered the United States in 1981 with a B-2 non-immigrant visa. The applicant was further advised that there was no indication that his authorized period of stay had expired prior to January 1, 1982, or that his unlawful status was known to the government.

The applicant, in response, asserted, in pertinent part:

That I had worked so hard on any available odd jobs during those period from 1981 of my arrival from this county that I adopted as my own in order to survive, due to fear of exposing myself regarding my status and to earn a living, I had to work with pay "under the table" for so many years.

The director, in denying the application, noted that the applicant's response failed to overcome the adverse evidence.

While the applicant's attempt to address the issue cited by the director is not entirely satisfactory, the record contains no sworn statement executed by the applicant corroborating the interviewing officer's question, and the applicant indicated on his Form for Determination Class Membership that he entered the United States without inspection. Further, the applicant did not indicate at items 22 through 28 on his Form I-687 application to have entered the United States with a visa.

Accordingly, the AAO finds that there is insufficient evidence in the record to support the director's findings that the applicant's oral testimony was inconsistent with other information in the record, and this finding is withdrawn.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Affidavits from [REDACTED] of Los Angeles, California and [REDACTED] of Van Nuys, California, who indicated that they have known the applicant since October 1981 and that the applicant was their roommate at [REDACTED], for six months and one year, respectively.
- A letter dated June 10, 1990, from [REDACTED], of Boutique & Tailoring in Los Angeles, California, who indicated that the applicant was in his employ as a costume tailor from October 1981 to September 1987.
- A pay stub for the period ending May 31, 1982, from Exclusively Emily, Inc.
- A letter dated July 16, 1989, from [REDACTED], general manager of Little Tokyo Bowl in Los Angeles, California, who attested to the applicant's employment as an inventory clerk since November 7, 1987.
- Wage and tax statements for 1987 and 1988 from Little Tokyo Bowl.

- An affidavit from [REDACTED] of Los Angeles, California, who indicated to have met the applicant in Los Angeles “sometime in August 1981 and also during the years 1982, 1983 and again when he was working at [REDACTED].” The affiant asserted that the applicant made alteration on his suits.
- A thank-you card from the American Cancer Society dated November 5, 1982.
- A conditional receipt for life insurance dated November 5, 1981.
- A social security printout dated April 12, 2006, reflecting the applicant’s wages since 1987.
- A Philippines Airline ticket dated May 8, 1987, from Mexico to Manila (Philippines).

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through October 1987, as he has presented contradictory documents, which undermines his credibility. Specifically:

- Mr. [REDACTED] attested to the applicant’s employment from October 1981 to September 1987. **However, the applicant indicated in a statement signed February 10, 1990, that he was self-employed.** Assuming, arguendo, the applicant worked for [REDACTED], the employment letter submitted failed to provide the applicant’s address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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.
- Likewise, the employment letter from [REDACTED] failed to provide the applicant’s address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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 life insurance receipt only serves to establish that it was purportedly signed on November 5, 1981, as pertinent information such as the address of the applicant at the time the document was signed along with name and address of the company was not provided.
- The American Cancer Society card raises questions to its authenticity as it contains a revision date of August 1985.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as

required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, while not the basis for the denial of this application or the dismissal of the appeal, it must be noted that the preparer of the applicant's Form I-687 application, [REDACTED], had been convicted of violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on May 8, 1995. These convictions were the result of Operation Desert Deception, a large-scale fraud investigation centered in Las Vegas, Nevada, Phoenix, Arizona, and Los Angeles, California. In addition, the investigation revealed that the notary, Susanna Telesmanic, fraudulently used her notary stamp on the supporting documentation. The operation targeted providers of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits; *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*).

This information seriously diminished the credibility of information contained in the applicant's Form I-687 application and supporting documentation.

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