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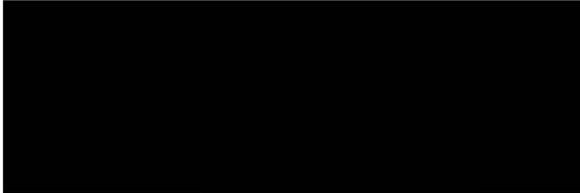
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



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

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FILE:

MSC 02 190 65512

Office: LOS ANGELES

Date:

MAR 21 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for 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, counsel asserts that the applicant's testimony was never challenged as untrue and the affidavits submitted were never questioned as to their veracity. Counsel contends that the applicant has proven, 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.

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).

At the time the applicant filed his LIFE application, he submitted no evidence to establish his continuous residence and physical presence in the United States during the requisite periods.

On May 7, 2003, the director issued a Form I-72, requesting the applicant to submit evidence to establish continuous presence in the United States from 1981 through 1987. The applicant, however, failed to respond to the notice.

On October 6, 2005, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to establish his entry into the United States before January 1, 1982, and evidence of continuous residence since that date through May 4, 1988. Counsel, in response, submitted:

- A notarized affidavit from [REDACTED] of South Gate, California, who indicated he has known the applicant since December 1981, and attested to the applicant's current address and to his character.
- A notarized affidavit from [REDACTED] of Compton, California, who indicated she has known the applicant since February 1982, and attested to the applicant's current address and to his character.
- A letter dated October 19, 2005, from [REDACTED], pastor of Sanctuary of our Lady of Guadalupe in Huntington Park, California, who indicated the applicant has been a member of its parish since 1982. The pastor indicated the applicant was an altar boy until 1985 and resided with [REDACTED] and [REDACTED] z in South Gate.

Counsel indicated that the affidavits and letter were the only evidence the applicant could gather.

On appeal, counsel submits a notarized affidavit from [REDACTED] of Baldwin Park, California, who indicates he has known the applicant since December 1981. The affiant attested to the applicant's current address and indicated that the applicant was employed at times at his meat market business in Vernon, California.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The AAO, however, does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988, as inconsistent and contradicting statements have been submitted. Specifically:

1. [REDACTED] claimed to have known the applicant since December 1981, but failed to provide an address for the applicant during the period in question, no details regarding the nature or origin of his relationship with the applicant, or the basis for his continuing awareness of the applicant's residence.

2. [REDACTED] claimed to have known the applicant since February 1982. As such, she cannot attest to the applicant's residence in the United States prior to 1982. Further, the affiant provided no address for the applicant during the period in question, no details regarding the nature or origin of her relationship with the applicant, or the basis for her continuing awareness of the applicant's residence.
3. The letter from [REDACTED] has little probative value as the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.
4. [REDACTED] indicated that the applicant resided with [REDACTED] and [REDACTED] in South Gate; however, no evidence from either individual was submitted to corroborate the reverend's letter. As the applicant was a minor, it is conceivable that he would have been residing with an adult during the period in question. The applicant's failure to provide the name of the individual he resided with along with an attestation from said individual raises serious questions about the credibility of his claim and the authenticity of the reverend's letter submitted.
5. [REDACTED] claimed to have known the applicant since February 1982, and attested to the applicant's employment at his meat market business. The affiant, however, provided no address for the applicant during the period in question and failed to provide the applicant's dates of employment. It is noted that the applicant claimed on his Form I-687 application employment at a meat market commencing in June 1993.

These factors raise significant issue to the legitimacy of the applicant's residence during the period in question.

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).

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.

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