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U.S. Citizenship
and Immigration
Services

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FILE:

Offices: PHOENIX

Date: NOV 03 2008

[REDACTED]
consolidated herein]
MSC 02 249 63564

IN RE: Applicant:

APPLICATION:

[REDACTED]

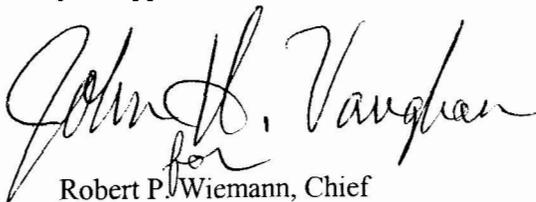
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.


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 director in Phoenix, Arizona. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director failed to properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant resided in the United States continuously in an unlawful status from before January 1, 1982 through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 applicant, a native of South Korea who claims to have lived in the United States since April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 6, 2002. At that time the record included the following documentation of the applicant's residence during the period 1981-1988, most of which was filed in 1991:

- An employment letter from [REDACTED], manager of [REDACTED] Marine Service in Los Angeles, California, dated March 11, 1991, stating that the applicant was employed as a welder from July 1981 to May 1984, beginning at a salary of \$2.50 per hour and later increased to \$3.25 per hour.
- An affidavit of employment from the technical manager of Beam Industries (name unidentifiable) in Los Angeles, California, dated March 15, 1991, stating that the applicant was employed as a "Telephone Installment Helper," installing telephones, from May 1986 to the present (1991), and was paid \$6.25 per hour.

A copy of a Rental Agreement between the applicant and [REDACTED] dated April 28, 1981, for a month to month rental of [REDACTED] Los Angeles, California, at \$170.00 per month, beginning on May 1, 1981, signed by the lessor [REDACTED]

An affidavit from [REDACTED] elder at Youung Eun Korea Church located at [REDACTED] in Los Angeles County, dated March 25, 1991, stating that the applicant had been residing in the State of California since 1981, and been a member of the church since then.

- An affidavit from [REDACTED], a resident of Los Angeles, California, dated March 20, 1991, stating that the applicant was a tenant in his home located at [REDACTED], Los Angeles, California, from April 1981 to July 1984, and that the applicant rented one bedroom from him at a monthly rent of \$170.00.
- An affidavit from [REDACTED], a resident of Downey, California, dated March 20, 1991, stating that he had personal knowledge that the applicant resided at the following addresses: [REDACTED], Los Angeles, California, from April 1981 to July 1984; [REDACTED], Downey, California, from August 1984 to November 1989; and [REDACTED] Norwalk, California, from December 1989 to the present (1991), and that he and the applicant were good friends.

- An affidavit from [REDACTED] a resident of Los Angeles, California, dated March 15, 1991, stating that he had knowledge that the applicant traveled on a fishing boat from Long Beach to near Tijuana, Mexico, on July 2, 1987, with a friend, and that the applicant returned to Long Beach in the early morning of July 4, 1987.

In a Notice of Intent to Deny (NOID) dated April 11, 2007, the director indicated that the documentation submitted by the applicant was insufficient to establish that he resided continuously in the United States during the qualifying period. The director noted that the applicant's testimony at his LIFE legalization interview on March 27, 2007 – that he entered the United States by boat in Boston, Massachusetts, in April 1981 – contradicted the applicant's statement on the Form I-589, Request for Asylum in the United States, that he filed on November 17, 1994, and the Form G-325A, signed by the applicant on November 11, 1994, which he submitted with the Form I-589. On both forms the applicant stated that he first entered the United States at San Ysidro, California, in April 1984. The director indicated that these contradictions undermined the veracity of the applicant's claim that he resided in the United States continuously in an unlawful status from April 1981 through May 4, 1988. The applicant was granted 30 days to submit additional documentation.

In response, the applicant provided some explanations for the evidentiary discrepancies cited in the NOID. Counsel submitted the following additional documentation as evidence of the applicant's residence in the United States during the period 1981-1988:

- A letter from [REDACTED] a resident of Los Angeles, dated May 1, 2007, stating that he and the applicant lived together in a house located on [REDACTED] and [REDACTED], Los Angeles, starting in February 1985, that the applicant helped him set up his office, and that a few years later the applicant and his wife moved to Arizona.

A letter from [REDACTED], residence unidentified, dated May 9, 2007, stating that he met the applicant around July 8, 1981, that they became roommates and lived together in an apartment in "Koreatown" for about four years, and that he moved out to get married. Mr. [REDACTED] asserted that he and the applicant kept in touch for about two more years after he moved out and then they lost contact with one another until he recently ran into the applicant in a restaurant.

- A copy of the applicant's [REDACTED] Passport, issued by the Republic of Korea, showing an issue date of October 20, 1980.

On June 5, 2007, the director denied the application. The director indicated that the additional documentation and explanations of evidentiary discrepancies were insufficient to establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

The applicant filed a timely appeal, asserting that the director failed to properly evaluate the evidence in the record. Counsel asserts that the director should ignore information on the Form I-589 because it was prepared by an "immigration broker" who "convinced the applicant to submit an asylum application without clearly explaining the content of the application." In counsel's view, the documentation in the record is sufficient to establish that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988. No new evidence is submitted on appeal.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

On a Form I-687, Application for Status as a Temporary Resident, which the applicant filed in November 1991, along with a form for determination of class membership in the Catholic Social Services (CSS v. Meese) legalization class action lawsuit and the aforementioned affidavits from that year, the applicant listed the following residential addresses since April 1981:

Residences:

- [REDACTED], Los Angeles, California, from April 1981 to July 1984;
- [REDACTED] Downey, California, from August 1984 to November 1989;
- [REDACTED], Norwalk, California, from December 1989 to the present (1991).

Employers:

- [REDACTED] Marine Service in Los Angeles, California, from July 1981 to May 1983;
- [REDACTED] Beam Industries in Los Angeles, California, from May 1986 to the present (1991).

On the Form I-589 (asylum application), and the accompanying Form G-325A (biographic information) filed in 1994, the applicant listed the following address in the 1980s: [REDACTED], from May 1984 to the present (1994), and the applicant stated that he was

self-employed as a painter from May 1984 to the present (1994). On the Form I-589 the applicant indicated in response to question #12 (arrival in the U.S.), that he arrived in the United States in April 1984, through San Ysidro, California, and on the accompanying Form G-325A, in response to the question of the applicant's last address outside the United States of more than one year the applicant listed the following: [REDACTED], Seoul, Korea, from February 1961 (his month of birth) to April 1984.

Thus, in addition to contradictory information regarding the applicant's initial date of entry into the United States (April 1981 or April 1984), and location of initial entry (Boston, Massachusetts, or San Ysidro, California), the documentation from 1991 and 1994 contains completely contradictory information about the applicant's residential addresses during the 1980s and partially contradictory information about the applicant's employment during the 1980s.

Counsel asserts that the information furnished in the applicant's asylum application was incorrect because it was prepared by some "immigration broker" who "convinced the applicant to submit an asylum application without clearly explaining the content of the application." In part E of the Form I-589, however, the applicant signed under penalty of perjury that the information on the application and all accompanying documents were true and correct to the best of his knowledge and belief. The applicant did not indicate that anyone prepared the application for him, since the space in Part E designated for the name, address, and signature of the person preparing the form if other than the applicant is blank. Therefore, counsel's assertion that the applicant was unaware of the contents of his asylum application is not credible.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The irreconcilable conflicts between the information provided on the Form I-687 in 1991 and the Form I-589 and Form G-325A in 1994 is also reflected in the affidavits from [REDACTED] in 1991 and [REDACTED] in 2007. Whereas [REDACTED] stated that the applicant resided on [REDACTED] in Downey, California from August 1984 to November 1989, [REDACTED] stated that the applicant lived with him on [REDACTED] in Los Angeles beginning in February 1985.

Even if the AAO overlooked the conflicting affidavits and the applicant's inconsistent claims to have entered the United States in April 1981 or in April 1984, the other documentation of record does not demonstrate the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

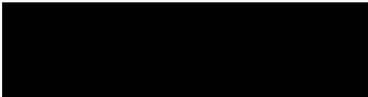
The affidavit and letter of employment from [REDACTED] of [REDACTED] Marine Service and the technical manager of Beam Industries, both in Los Angeles, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not indicate the applicant's residence during the time of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor are they supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment letter and affidavit have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits and letters from [REDACTED], and [REDACTED] who claim to have resided with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – since 1981 – the authors provide remarkably little information about his life in the United States and their interaction with him over the years. Nor did the authors submit any documentary evidence – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. The affiant [REDACTED] only attested to the applicant's alleged trip to Mexico in 1987 and provided no information about the applicant before 1987 and after 1987. In view of these substantive shortcomings, the AAO finds that the foregoing letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The copy of the Rental Agreement between the applicant and [REDACTED] dated April 28, 1981, bears no signature of the applicant, and does not include a notarial stamp or other official marking to authenticate its date. Nor is it supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the indicated address in Los Angeles after May 1, 1981. As for the copy of the [REDACTED]'s Passport, though it may have been issued to the applicant on October 20, 1980, it does not establish that he thereafter entered the United States in April 1981, which he claims to have done without the passport by jumping ship. Thus, the Rental Agreement and the [REDACTED]'s Passport have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.



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