

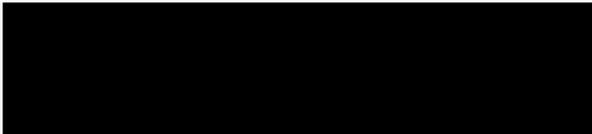
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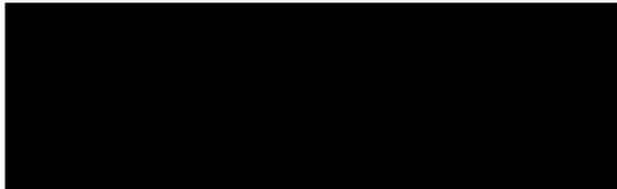
MSC 02 240 63027

Office: LOS ANGELES, CA

Date: NOV 12 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:

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 forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status filed under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the applicant's failure to submit requested court documents relating to charges involving a crime of moral turpitude. The director pointed out that the applicant used the name [REDACTED] at the time of his arrest. Yet, he had the Superior Court of California, County of Los Angeles conduct two searches in its records using the name [REDACTED]. Thus, the director concluded that the court clearance letters from the Superior Court of California, County of Los Angeles were insufficient as they had not been conducted using the name used at the time of the applicant's arrest. Because of the applicant's failure to submit the requested court documents the director was not able to determine whether the applicant was inadmissible, and thus the director denied the application. The director also determined that the applicant failed to establish that he had resided in the United States throughout the statutory period.

On appeal, the applicant indicated that he submitted all the court documents that were available to him and that he was eligible to adjust to permanent resident status under the LIFE Act.

The regulation at 8 C.F.R. § 103.2(b)(13) states in relevant part:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

Section 212(a)(6)(C) of the Act provides in pertinent part:

Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1).

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

*See also* 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 states 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 petitioner 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 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 absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and “state the employer's willingness to come forward and give testimony if requested.” *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.<sup>1</sup>

At issue in this proceeding is whether the applicant has established that he resided in the United States throughout the statutory period and whether he submitted the appropriate court documents to meet his burden of establishing that he is admissible to the United States, that he has not been convicted of three misdemeanors or a felony and that he is eligible to adjust to lawful permanent resident status. Here, the applicant has failed to meet this burden.

The record indicates that on or near August 26, 1994, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 28, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director requested original, court certified dispositions of any and all arrests. If the arrests did not go to trial, the applicant was to submit proof from the city attorney's office indicating the final disposition. In cases where a court disposition is not available, the director advised the applicant that he was to provide official or certified evidence from the court confirming the unavailability of the record. The director attached a copy of the applicant's Federal Bureau of Investigation (FBI) rap sheet to the request for court documents.

The record contains the following charges brought against the applicant and documentation of the following convictions.

1. On July 6, 1992, the Municipal Court of the Metropolitan Courthouse Judicial District, County of Los Angeles, State of California convicted the applicant of the following misdemeanor: violating California Vehicle Code § 23152(B) driving with .08% or more blood alcohol content, (Case Number: [REDACTED]).
2. On April 26, 1999, the Municipal Court of the Metropolitan Courthouse Judicial District, County of Los Angeles, State of California convicted the applicant of the following misdemeanor: violating California Vehicle Code § 23152(B) driving with .08% or more blood alcohol content, (Case Number: [REDACTED]).
3. According to the California record of arrests in the applicant's second A-file bearing number [REDACTED] on February 4, 1993, the Municipal Court of the Metropolitan Courthouse Judicial District, County of Los Angeles, State of California convicted the applicant of the following misdemeanor: violating California Penal Code § 647(B) disorderly conduct: prostitution, (Case Number: [REDACTED]). The applicant failed to submit a final court disposition or any other record related to this arrest and conviction.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

4. On September 30, 1999, the Los Angeles Police Department arrested the applicant under the name [REDACTED] and charged him with inflicting corporal injury on his spouse/cohabitant. The director provided a record of this arrest to the applicant and requested the final disposition in the matter. The applicant submitted a Superior Court of California, County of Los Angeles, Court Record Certification which indicates that on October 31, 2006, the Executive Officer/Clerk of the court conducted a name/date of birth search using the name [REDACTED] and the date of birth October 16, 1969, and he determined that the court had no record within its misdemeanor/felony indices bearing such name and date of birth. The applicant also submitted a letter from the Executive Officer/Clerk of The Superior Court, Los Angeles California which indicates that on November 7, 2006 the Clerk conducted a search in the felony records of that court and found no record of an action naming [REDACTED], date of birth October 16, 1969.
5. On March 2, 2005, the Los Angeles Police Department arrested the applicant under the name [REDACTED] and charged him with inflicting corporal injury on his spouse/cohabitant. The director provided a record of this arrest to the applicant and requested the final disposition in the matter. The applicant submitted a Superior Court of California, County of Los Angeles, Court Record Certification which indicates that on October 31, 2006, the Executive Officer/Clerk of the Court conducted a name/date of birth search using the name [REDACTED] and the date of birth October 16, 1969 and he determined that the court had no record within its misdemeanor/felony indices bearing such name and date of birth. The applicant also submitted a letter from the Executive Officer/Clerk of The Superior Court, Los Angeles California which indicates that on November 7, 2006 the Clerk conducted a search in the felony records of that court and found no record of an action naming [REDACTED], date of birth October 16, 1969.
6. On July 4, 1997, the Los Angeles Police Department charged the applicant under California Penal Code § 245(A)(1) with the use of force with a deadly weapon, not a firearm, with great bodily injury likely. According to the FBI rap sheet in the record, the victim in this matter was not available or declined to testify and the prosecution released the applicant after detention only. There was no court hearing held in this case, according to the FBI rap sheet. The applicant did not submit any final court disposition or any other record related to this matter.

On October 26, 2006, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to provide requested court documents and that the applicant had failed to demonstrate continuous residence in the United States during the statutory period. The director pointed out that when U.S. officials interviewed the applicant at the San Ysidro Port of Entry in 2001, he testified that he had lived in the United States for thirteen years. Thus, the director found that the record indicated that the applicant had resided in the United States since 1988, and that he had not resided in this country throughout the statutory period. For these reasons, the director intended to deny the application.

In his rebuttal, the applicant indicated that evidence in the record demonstrated that he had resided continuously in the United States throughout the statutory period. He also stated that he has never been

convicted of a felony. With the rebuttal, the applicant submitted the Superior Court, County of Los Angeles, State of California, Court Record Certification dated October 31, 2006 which indicates that the court has no record of a misdemeanor/felony conviction under the name [REDACTED], date of birth October 16, 1969 and the Superior Court, County of Los Angeles, State of California letter dated November 7, 2006 which indicates that the court has no felony conviction records under the name [REDACTED], date of birth October 16, 1969. In addition, the applicant submitted statements from acquaintances who state that he was in the United States during the statutory period.

On November 24, 2006, the director denied the application based on the reasons set out in the NOID. The director also indicated that the court clearance letters submitted were not sufficient because the applicant had the court conduct a search for records bearing a name that was not the same as the name which he used at the time of his arrest in 1999 when he was charged with a crime involving moral turpitude. Consequently, the director was not able to determine whether the applicant was inadmissible.

On appeal, the applicant indicated that he submitted all the court documents available to him and that he is eligible to adjust to lawful permanent resident status under the LIFE Act. He submitted a letter from the Los Angeles Police Department (LAPD) dated December 1, 2006 which states that the LAPD released the applicant after his September 30, 1999 arrest as there were insufficient grounds to go forward with the charge of inflicting corporal injury to spouse/co-habitant which the police had brought against him. The applicant submitted a second letter from the LAPD dated December 1, 2006 which indicates that the prosecutor issued a pre-filing deferral after the applicant's March 2, 2005 arrest, and that this matter was never brought to trial either.

The applicant failed to provide final court dispositions or other official records relating to his arrests listed at items 3 and 6 above. Yet, the director had requested that the applicant provide final court dispositions relating to all of his arrests. The appeal is dismissed on this basis. See 8 C.F.R. § 103.2(b)(13).

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

During 2001, the applicant provided testimony that he had resided in the United States for thirteen years. Based on this, the director concluded that the applicant began residing in the United States during 1988, and that he had not resided in the United States continuously throughout the statutory period. The applicant did not attempt to explain on rebuttal or on appeal, why, in 2001, he testified that by that time, he had resided in the United States for only thirteen years, and yet claimed in his LIFE Act application that he resided in the United States throughout the statutory period. He also failed to provide independent evidence of his having resided in the United States during the statutory period.

Thus, the record indicates that the applicant willfully misrepresented material facts relating to having resided in the United States prior to 1988 when presenting evidence in support of his LIFE application, and that he did this in an effort to procure the status of lawful permanent resident in the United States. As such, the applicant is inadmissible. See Section 212(a)(6)(C) of the Act. The appeal is dismissed on this basis as well.

In turn, the preponderance of the evidence fails to establish that the applicant resided continuously in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis as well.

As demonstrated in the conviction summaries listed at items 1 through 3 above, a preponderance of the evidence indicates that the applicant has been convicted of three misdemeanors. Thus, the applicant is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1). The appeal is dismissed on this basis as well.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

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