

**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, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[REDACTED]

FILE:

[REDACTED]
MSC-02-162-60044

Office: SAN FRANCISCO

Date: **SEP 02 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, San Francisco, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 and 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 under the provisions of section 212(a) of the Act, 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).

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The district director denied the application on September 1, 2006 because the applicant failed to establish residence in the United States in an unlawful status from January 1, 1982 through May

4, 1988. Specifically, the director noted that the applicant submitted some evidence of residency in the United States from 1982 until the end of the requisite period but that the only evidence demonstrating that the applicant entered the United States before January 1, 1982, in accordance with 8 C.F.R. 245a.11(b) was a declaration from [REDACTED]

As noted by the director in the denial, [REDACTED] declaration states that he has known the applicant since December 20, 1981 when they met at a family reunion in Glens Ferry, Idaho. The record reveals that the Service contacted [REDACTED] on August 29, 2006, at the number that he provided on his affidavit. At that time, [REDACTED] stated that he met the applicant in Chicago during the Christmas and New Year holiday in either 1981 or 1982. At that time, Mr. [REDACTED] was living in Pittsburg, California and went to Chicago for a short trip that lasted six or seven days. [REDACTED] also claims that he did not see the applicant again until six or seven years later when the applicant came to California. Noting the affiant's inconsistent testimony, the director concluded that the affidavit does not merit sufficient weight to establish the applicant's entry prior to January 1, 1982. Because the record does not contain any other evidence of the applicant's entry prior to January 1, 1982, the application was denied.

On appeal, counsel for the applicant attempts to explain the inconsistent evidence provided by [REDACTED]. He asserts that [REDACTED] was at that time ill and under a lot of medication. [REDACTED] was therefore not in his right senses and misunderstood the query and thus responded incorrectly." Accompanying the appeal is a second affidavit from [REDACTED]. In the second affidavit, [REDACTED] asserts "I [REDACTED] met [REDACTED] on the 20th of December 1981 in a family reunion in a small town of Glens Ferry Idaho . . . Like I manifest in the affidavit of July 26, 2006 and do [sic] to my age and health conditions to my medication I didn't have the capacity of my 5 senses [sic] to respond correctly when I was asked by telephone."

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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). In this case, the applicant has failed to provide independent objective evidence which would reconcile the inconsistencies noted. [REDACTED]'s statement that he was medicated during the telephone call with the Service does not constitute "competent objective evidence."

The existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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 applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since

prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value and the contradictory nature of the testimony of the affiant on his behalf, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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