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

12

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

MAY 25 2007

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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. A subsequent appeal was rejected by the Administrative Appeals Office (AAO). On March 12, 2007, the AAO reopened its decision and, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), afforded the applicant 30 days in which to supplement the record. The appeal will be dismissed.

On September 7, 2006, the AAO rejected the appeal, finding that the appeal was untimely filed. Counsel subsequently provided the AAO with evidence reflecting that the appeal was received at the district office in a timely manner. The applicant was granted 30 days from March 12, 2007, to respond to the AAO's notice of motion. In response, counsel provides copies of the documents that were submitted on appeal.

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 asserted that the applicant had submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel asserted that the director did not properly consider all the evidence provided in response to the Notice of Intent to Deny. Counsel provided copies of additional documents along with previously submitted documents in support of the appeal.

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A letter dated June 19, 1990, from [REDACTED] of Robirds Woodshop in Los Angeles, California, who indicated that the applicant was employed by his brother, [REDACTED], from September 1981 to November 1986 and has preceded to work for him since that date.
- An envelope postmarked September 22, 1986, which listed the applicant's address as [REDACTED] Lennox, California.
- Several envelopes with indecipherable postmarks addressed to the applicant at [REDACTED] Lennox, California.
- An affidavit notarized July 12, 1990, from [REDACTED], California, who attested to the applicant's California residences at [REDACTED] Hawthorne from September 6, 1981 through February 15, 1985 and at [REDACTED] Lennox from February 16, 1985 through December 28, 1987.
- An affidavit notarized February 2, 2002 from [REDACTED] of Inglewood, California, who attested to the applicant's residence in the United States since 1982. The affiant provided a copy of his United States passport.
- An affidavit notarized February 2, 2002 from [REDACTED] of Inglewood, California, who indicated that she has known the applicant since 1984 and attested to the applicant's Inglewood residence since that time. The affiant provided a copy of her permanent resident card.
- An affidavit notarized February 2, 2002 from Andres D. [REDACTED], California, who attested to the applicant's residence in the United States since 1985. The affiant provided a copy of his United States passport.
- An affidavit notarized February 2, 2002 from [REDACTED] of Lennox, California, who indicated that she has known the applicant since 1987 and attested to the applicant's Inglewood residence since that time. The affiant provided a copy of her permanent resident card.
- A car insurance document signed on April 15, 1988.
- A notice dated July 6, 1998 from the California Department of Motor Vehicle (DMV), indicating that the applicant had been arrested on May 17, 1998 and convicted on June 15, 1998 of driving under the influence in Case no. [REDACTED]. The notice requested that the DMV be provided with evidence that he had successfully completed a 3-month drinking driving program on or before January 14, 1999.
- A Certificate of Completion dated January 15, 1999, from the Inglewood Substance Abuse and Traffic Violators Agency, which indicated that the applicant had successfully completed a 13-week first offender driving under the influence program.
- A letter dated January 15, 1999 from representatives of Inglewood Substance Abuse, who indicated that the applicant had completed all the requirements of the Inglewood Substance Abuse program in Case no. 8IW04693.

On May 20, 2003, the director issued a Form I-72, which informed the applicant to submit the final court disposition for his arrest on May 17, 1988, along with evidence of his continuous presence in the United States from 1981 to 1988. The applicant, in response, submitted copies of documents previously provided along with:

- A receipt dated March 4, 1982, from [REDACTED] Mfg. of Compton, California for a sofa bed.
- An envelope postmarked July 17, 1986, which was addressed to the applicant at [REDACTED] Lennox, California.
- Court documentation dated August 19, 2003, from the Superior Court for the Southwest District for Inglewood indicating that Case no. 89W01285 had been destroyed pursuant to [REDACTED] Code.

The applicant also submitted a California identification card (ID) issued on June 29, 1988, and several receipts. These documents, however, have no probative value or evidentiary weight as the applicant's name was not listed on the receipts and the ID card was issued subsequent to the requisite period.

On June 14, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient information and corroborative documents for the proclaimed years. The applicant was also advised that the receipts did not demonstrate his presence in the United States and the address on the envelopes submitted did not correspond with the address listed on his Form I-687 application. In response, counsel asserted the applicant indicated that the address listed on the envelopes corresponded to his cousin's home address and that he did not reside at said address.

Counsel submitted copies of documents previously provided along with [REDACTED] California driver license issued on November 19, 2002; [REDACTED] California driver license issued on December 27, 2001; and [REDACTED] California driver license issued on June 9, 1999. Counsel also submitted a notarized affidavit from [REDACTED] of Hawthorne, California, who indicated that he has known the applicant since 1981, and he and the applicant have attended social functions with their families. Mr. [REDACTED] attested to the applicant's California residences at [REDACTED], [REDACTED] from September 6, 1981 through February 15, 1985 and at [REDACTED] from February 16, 1985 through December 28, 1987. As evidence of his presence in the United States during the requisite period, Mr. [REDACTED] provided copies of his junior high school identification cards for the periods 1981 to 1982 and 1982 to 1983.

The director, in denying the application, noted that the documents accompanying the affidavits did not establish that the affiants were present during the attested timeframe or that the documents established a relation with the applicant.

On appeal, counsel asserts that the applicant responded to each issue raised in the Notice of Intent to Deny, and provided the required corroborating evidence. Counsel submits:

- A notarized affidavit from [REDACTED] of Hawthorne, California, who attested to the applicant's California residences at [REDACTED], Hawthorne from September 1981 through February 15, 1985, and at [REDACTED] from February 1985 to December 1987. The affiant provides copies of his California driver license with an indecipherable issue date, his California ID card issued on April 19, 2001 and an identification card dated April 13, 1987, from [REDACTED] in Gardena, California.
- A notarized affidavit from [REDACTED], California, who attested to the applicant's California residences at [REDACTED], Hawthorne from September 1981 through February 15, 1985, and at [REDACTED] from February 1985 to December 1987. The affiant provides a copy of his California driver license issued on July 10, 1999.

- A notarized affidavit from Patricia Ayala of Hawthorne, California, who attested to the applicant's California residences at [REDACTED], Hawthorne from September 1981 through February 15, 1985 and at [REDACTED] from February 1985 to December 1987. The affiant provides a copy of her high school identification card for 1980-1981.

The statements of counsel regarding the amount and sufficiency of the applicant's evidence of residence have been considered. However, the AAO does not view the affidavits from the affiants as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982 through May 4, 1988 as contradicting information has been presented. Specifically:

1. The applicant claimed on his Form I-687 application to have resided at one location since his entry into the United States. This residence, [REDACTED], does not correspond with the affidavits presented by Mr. [REDACTED], Mr. [REDACTED] or Ms. [REDACTED].
2. The affidavits from [REDACTED], [REDACTED], and [REDACTED] are not persuasive evidence of the applicant's United States continuous residence. While the affiants assert that the applicant was residing in the United States they provided no address for the applicant.
3. Except for the affidavit from Mr. [REDACTED] the remaining affiants provided no details as to how and where they met the applicant, and the nature of their interaction in subsequent years.
4. There is a significant period of time that has not been accounted for, namely January 1, 1988 through May 4, 1988. The affiants mentioned in number one above all attest to the applicant's residence through December 1987.
5. At item 36 of the Form I-687 application, the applicant was instructed to list his employment in the United States since his first entry; the applicant indicated "none." As such, the employment letter from Raymond Robirds raises questions to its authenticity.

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 issue arising from the documentation provided by the applicant, coupled with the lack of evidence for time-period noted above, 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 continuously resided in the United States for the requisite period. Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, as noted above, the California DMV notice dated July 6, 1988, reflects that the applicant has a misdemeanor conviction of driving under the influence. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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