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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L2

FILE: [redacted] Office: LOS ANGLES Date: DEC 19 2006

MSC 01 345 62598

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:

SELF-REPRESENTED

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant states that he submitted "a massive amount" of evidence in rebuttal to the director's Notice of Intent to Deny, and that the director failed to specify in her Notice of Denial why the evidence was insufficient. The applicant submits additional documentation in support of the appeal.

We concur with the applicant and find that the director failed to abide by the provisions of 8 C.F.R. § 245a.20, which require the director to notify the applicant of the grounds for the denial of his application. Nonetheless, we deny the applicant's request for a remand and will consider all of the evidence of record in rendering our decision.

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; 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 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.* [redacted] 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 Citizenship and Immigration Services (CIS) 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).

On a form to determine class membership, which he signed under penalty of perjury on July 1, 1993, the applicant stated that he first entered the United States in an illegal status on February 14, 1981. On his Form I-687, Application for Status as a Temporary Resident, the applicant stated that he lived at [redacted] California from January 1984 through the date of his Form I-687 application. The applicant also stated that, during the qualifying period, he worked as a self-employed gardener from February 1981 to October 1986, and as a laborer at SE-GI Products from October 1986 to February 1989.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A July 8, 1993 affidavit from [redacted] who states that the applicant had lived in California since February 1981. [redacted] also stated that he has a "relationship to" the applicant but does not specify the nature of that relationship.

2. A July 14, 1993 affidavit from [redacted], in which he stated that he met the applicant at a party and that they have become friends. The applicant stated that to his personal knowledge, the applicant had lived in Compton, California since 1985. [redacted] also stated that the applicant was also known as [redacted]

The applicant also submitted the following documentation regarding [redacted]

1. A social security card.

2. Copies of pay stubs from SE-GI Products, Inc. in Norco, California showing the payee as [redacted] Some of the stubs are dated in 1987 and 1988 but others contain only a month and day, therefore it cannot be determined in which year the pay was earned.

3. A certificate of group insurance from The Mutual Benefit Life Insurance Company, reflecting the policyholder as SE GI Products, Inc., and the insured as [redacted], with an effective date of April 1, 1987. The policy lists the beneficiary as [redacted]. We note that the applicant does not list this individual as a spouse, child, parent, or sibling.

4. A June 15, 1985 money order receipt payable to [redacted] and reflecting the name of [redacted]

The applicant submitted only one affidavit indicating that he had used the name [redacted]. As the applicant's supporting affidavit is from an admitted friend with no amplification on when or where the applicant used this alias, and therefore carries little weight in this proceeding. The applicant submitted no documentation from SE-GI confirming that the applicant and the individual it hired as [redacted] are the same person, or from any disinterested party that would confirm [redacted] as his alias. *See* 8 C.F.R. § 245a.2(d)(2).

On appeal, the applicant submits the following documentation:

1. A September 28, 2004 sworn statement from [redacted], in which she states that she has known the applicant since 1982, and that he is a good friend of the family. [redacted] did not state how and where she became acquainted with the applicant or that he had been present and residing in the United States since their initial acquaintance.

2. A September 27, 2004 affidavit from [redacted], in which he states that he has known the **applicant continuously in the United States since January 1983.** [redacted] **did not state the** circumstances surrounding his initial acquaintance with the applicant, and the applicant submitted no documentation reflecting that [redacted] **was present in the United States during the time he stated.**

3. **A September 29, 2004 affidavit from** [redacted] in which he states that he has known the applicant and that the applicant has been present in the United States since March 1983. [redacted] did not indicate the circumstances of his initial acquaintance with the applicant. The applicant submitted no documentation to reflect that [redacted] was present in the United States during the relevant period.

4. A September 27, 2004 affidavit from [redacted] in which he states that he has known the applicant since February 1984, when they became neighbors. [redacted] did not state at which address he and the applicant became neighbors. **We note that** [redacted] lists his address as [redacted] The applicant provided an address of [redacted] subsequent to filing his Form I-485 application on September 1, 2001. The record contains no information to document that [redacted] and the applicant were neighbors in any other community setting.

While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant lack sufficient detail that is amenable to verification. 8 C.F.R. § 245a.2(d). The applicant submitted a single affidavit, from an individual who had a "relationship" with him, to establish his residency in the United States prior to January 1, 1982. Given the lack of any credible contemporaneous documentation and the applicant's reliance on a single affidavit to establish his residency prior to 1981 it is concluded that he has failed to establish continuous residence in the U.S. for the required period.

Beyond the decision of the director, the applicant is inadmissible into the United States as he has been convicted of three or more misdemeanors. 8 C.F.R. § 245a.18(a).

The record reflects the following criminal history for the applicant:

7/27/1991 Charged by the Norwalk California Sheriff's Office with driving under the influence of alcohol/drugs and driving with a blood alcohol content of 8% or more, in violation of California Vehicle Code 23152(a) and (b). (case no. 91M09184). The charge of driving under the influence was dismissed. The applicant pleaded *nolo contendere* to violation of the vehicle code section 23152(b) and was found guilty. He was ordered to 10 days community service, participation in a first-offender alcohol and drug education and counseling program, and placed on 36 months probation.

2/18/92 Charged by the Lakewood Sheriff's Department with violation of section 20 of the California Vehicle Code, giving a false statement to the Department of Motor Vehicles/California Highway Patrol. The applicant was convicted and sentenced to three days in jail, fined $600 plus other assessments and placed on summary probation for three years. (Case no. 92MO2599.)

- **1/19/1994** Charged by the Norwalk Sheriff's Office with inflicting corporal injury on a spouse/cohabitant in violation of California Penal Code 273.5(a) (case no. 94M00776). The applicant pleaded *nolo contendere* and was found guilty. The court ordered the applicant to obey all laws and orders of the court, to stay away from the victim and to not commit any criminal offense.

- 7/25/1996 Charged with speeding and operating a vehicle without liability insurance. (case no. CR-1996-0009692). The applicant pleaded guilty in Magistrate's Court and was fined $149.50.

- 11/17/1996 Charged by the Saint Anthony's Sheriff's Office with domestic battery (case no 1240). The charges were subsequently dismissed.

- 12/3/1996 Charged by the Idaho Falls Sheriff's Office with possession of amphetamines/conspiracy to deliver. The charges were dismissed. (Case no. CR-1996-0005572.)

- 6/8/1997 Charged by the Norwalk Sheriff's Office with infliction of corporal injury on a spouse or cohabitant in violation of California Penal Code 273.5(a) (case no. 7CM05029). The applicant pleaded *nolo contendere* and was found guilty. He was sentenced to 120 days in the county jail, which was suspended, and was placed on 36 months probation.

- 3/15/1999 Charged by the California Department of Justice with driving under the influence of alcohol/drugs and driving with a blood alcohol content of 8% or more, in violation of California Vehicle Code 23152(a) and (b). The charge under subsection (a) was dismissed in the furtherance of justice and the applicant pleaded *nolo contendere* to the charge under subsection (b). He was found guilty. The applicant was sentenced to 96 hours in the county jail and placed on probation for 36 months.

  6/4/2000 Charged by the Norwalk Sheriff's Office with infliction of corporal injury on a spouse or cohabitant (case no. 0CM03952). The Compton Municipal Court dismissed charges of infliction of corporal injury on a spouse or cohabitant and willful cruelty to a child in violation of California Penal Code 273.5a and 273A(b), but convicted the applicant of battery in violation of California Penal Code 242. The applicant received a suspended sentence of 90 days in the county jail and placed on probation for 24 months..

The record reflects that the applicant was convicted of least six misdemeanors. The regulation at 8 C.F.R. § 245a.18 provides:

> (a) *Ineligible aliens.* (1) An alien who has been convicted of a felony or of three or [more] misdemeanors committed in the United States is ineligible for adjustment to LPR status under this Subpart B.

Accordingly, the applicant is ineligible for admission into the United States.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center 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).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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