U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, D.C. 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L 2

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 08 2006

MSC 02 179 60067

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

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 puts forth a brief disputing the director's findings. Counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on 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).

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

- An affidavit notarized March 18, 2002 from [redacted] Point, California, who attested to the applicant's residence at [redacted] from October 1986 to October 1989. [redacted] asserted that he was a neighbor of the applicant.

- An affidavit notarized March 4, 2002 from [redacted] f Garden Grove, California, who indicated that the applicant was his roommate at [redacted] ia from October 1986 to October 1989.

- An additional affidavit notarized August 4, 2003 from [redacted] who indicated that the applicant was his roommate at [redacted] om October 1986 to October 1989 [redacted] asserted that the lease agreement was in his and the applicant's name and all the utilities were under his name.

- A statement dated December 31, 2001 from [redacted] California, who indicated that the applicant was his roommate at [redacted] rom January 1983 to June 1984.

- An affidavit notarized February 6, 2002 from [redacted] uena Park, California, who indicated that he has known the applicant since January 1984, and is aware of the applicant's continuous residence in the United State since that date.

- An affidavit notarized February 2, 2002 from [redacted] California, who attested to the applicant's addresses at [redacted] m January 1983 to June 1984, [redacted] Los Angeles from July 1984 to September 1986 and at [redacted] Anaheim from October 1986 to October 1989. [redacted] asserted that she is a friend of the applicant and has kept in contact with him.

  An affidavit notarized January 28, 2002 from [redacted] of Yucca Valley, California, who attested to the applicant's addresses at [redacted] Los Angeles from January 1982 to December 1982, [redacted] from January 1983 to June 1984 [redacted] Los Angeles from July 1984 to September 1986 and at [redacted] Anaheim from October 1986 to October 1989. [redacted] asserted that he is a friend of the applicant and has kept in contact with him.

- An affidavit notarized February 7, 2002 from [redacted] of Kihei, Hawaii, who indicated that she has known the applicant since December 1981, and is aware of the applicant's continuous residence in the United State since that date.

- An additional affidavit notarized July 30, 2003 from [redacted] who indicated that she was a licensed physician who practiced medicine from 1972 to 1991 in Los Angeles, California. [redacted] asserted that the applicant was a patient from December 1981 until her retirement in 1991.

- Affidavits notarized in February 2002 from [redacted] of Kihei, Hawaii and [redacted] of Yorba Linda, California, who attested to the applicant's addresses [redacted] Los Angeles from December 1981 to December 1982, 1623 [redacted] from January 1983 to June 1984, [redacted] Way, Los Angeles from July 1984 to September 1986 and at [redacted] from October 1986 to October 1989. [redacted] u asserted that the applicant

occasionally visited his home in Pasadena, California during this period. Ms. Jamil asserted that she met the applicant through a former friend in December 1981.

On appeal, counsel asserts that Citizenship and Immigration Services has been instructed to apply existing law to determine whether sufficient evidence of presence exists. Applying that law in the instant case, however, the AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982, as contradicting information has been presented. At the time of his LIFE interview, the applicant informed the interviewing officer that his first employment in the United States was at an Arco Gas Station for approximately six months, he then worked for about three years at odd jobs (cleaning, painting and cutting grass) until 1985, and in 1986 he worked at a liquor store for approximately three years. However, on his Form I-687 application, the applicant listed his first employment as Sun Dried Foods in Los Angeles from December 1981 to January 1984, and subsequently was employed at Hardy Box in Los Angeles from March 1984 to September 1986 and at Commerce Electronics from October 1986 to October 1989. In addition, on his Form I-687, the applicant listed [redacted] Anaheim, California as residence from October 1986 to October 1989. However, five affiants indicated that the applicant resided at [redacted] from October 1986 to October 1989. Further, the applicant, throughout the application process, has not provided any employment documentation to corroborate either his statement made at the time of his interview or his claims of employment listed on his Form I-687 application.

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).

In addition [redacted] asserted that the applicant's name appeared on the lease agreement for the residenc[redacted] however, said agreement was not provided to corroborate [redacted]s claim. [redacted] asserted that the applicant had been a patient since December 1981; however, neither appointment notices nor receipts, which would add credibility to the affiant's claim, were provided by the applicant. In light of the fact that the applicant claims to have continuously resided in the United States since 1981, the inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the contradicting information, absence of a plausible explanation along with the absence of contemporaneous documentation, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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