U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 22 2006
MSC 02 052 63598

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 (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. *See* section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 California identification card issued on January 9, 1988 and listed the applicant's address as [redacted] Hollywood, California.

- An affidavit notarized July 14, 1990 from [redacted] of Los Angeles, California, who indicated that he was a manager and attested to the applicant's Los Angeles residence at [redacted] from November 1981 to August 1985.

- An envelope that the applicant claimed was mailed in 1982.

- A receipt dated April 9, 1983 from Paisano Meat Market in Gardena, California.

- Several pay stubs from September 21, 1986 through December 28, 1986, January 11, 1987 through December 27, 1987 and January 10, 1988 through May 15, 1988 from Olympic Market in Los Angeles.

On June 20, 2003, the director issued a Form I-72 advising the applicant to submit employment verification letters on company letterhead from his employers, the final court dispositions for his arrests in 1993 and 1998, and evidence to establish his continuous presence in the United States from 1981 to 1985. The applicant, in response, submitted copies of documents that were previously provided along with:

- An affidavit from [redacted] of Los Angeles, California, who indicated that he met the applicant at a family party in 1981 and has remain in contact with him since that time.

- Individual Income Tax Returns for 1983, 1984 and 1985 that were received by the Internal Revenue Service (IRS) on August 5, 2003.

In a Notice of Intent to Deny dated September 7, 2004, the director informed the applicant that the tax returns submitted did not establish his presence in the United States during those years, as they were not filed with IRS until 2003. The applicant was also informed that the other documents submitted were insufficient to establish continuous residence in the United States since before January 1, 1982 through May 4, 1988.

The applicant, in response asserted that he has submitted sufficient evidence to establish his continuous residence in the United States during the requisite period. Regarding the tax returns, the applicant stated:

> I earned cash I was told that I could filed my tax returns even if the money I made was paid to me cash, but if I'm reporting such income and paying taxes to the IRS for those years, that means that I worked and was a residence in California back then.

The applicant submitted copies of documents that were previously provided along with an earnings statement for the period ending October 31, 1981.

On appeal, the applicant asserts, "not only I have provided tax returns as proof of my employment in the USA, but also other proofs of residence as well."

The AAO, however, does not view the documentation submitted as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982 through September 1986 as:

1. [redacted] attested to the applicant's Los Angeles residence at [redacted] from November 1981 to August 1985; however, the applicant did not claim on his Form I-687 application to have resided at this address during the requisite period.

2. The receipt from Paisano Meat Market only serves to establish the applicant's presence in the United States on that specific date.

3. The envelope presented by the applicant cannot be considered as it has an indecipherable postmark.

4. The earnings statement and tax returns raise questions to their authenticity, as the applicant did not claim any employment prior to 1986 on his Form I-687 application.

Like a delayed birth certificate, the amended tax returns years after the claimed transaction raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

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 issues arising from the documentation provided by the applicant, 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 entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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

The regulation at 8 C.F.R. § 245a.18(a) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony," pursuant to 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

On June 20, 2003 and August 17, 2004, the director issued a Form I-72, requesting that the applicant submit the final court dispositions for all his arrests. The applicant, in response, submitted court dispositions that revealed the following:

1. On March 10, 1989, the applicant was arrested in Los Angeles County for driving under the influence, a violation of section 23152(a) VC, driving with .08 percent or more alcohol in the blood,

a violation of section 23152(b) VC, and driving without a license, a violation of section 12500(a) VC. On March 31, 1989, the applicant was convicted of driving with .08 percent or more alcohol in the blood, a misdemeanor. The applicant was ordered to pay a fine and placed on probation for three years. The remaining offenses were dismissed. [redacted]

2. On October 17, 1993, the applicant was arrested in Los Angeles, County for inflicting corporal injury upon a spouse or cohabitant, a violation of section 273.5 PC, a misdemeanor. The final outcome, however, is unclear as the court disposition indicates that on November 18, 1993 the disposition was delayed – "action not brought to court in time court order for payment of legal assistance...." [redacted]

3. On March 30, 1998, the applicant was arrested in Los Angeles County for making a terrorist treat, a violation of section 422 PC, vandalism, a violation of section 594(a) PC, and disturbing the peace, a violation of section 415 PC. On March 31, 1998, the applicant was convicted of vandalism and disturbing the peace, both misdemeanors. The applicant was sentenced to serve 30 days in jail, ordered to pay a fine and placed on probation for two years. The remaining offense was dismissed. [redacted]

The applicant is ineligible for the benefit being sought due to his three misdemeanor convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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