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U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

MSC 01 328 60239

Office: Los Angeles

Date: JUN 30 2006

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. If your appeal was sustained, or if the matter 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, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) to corroborate his claim of continuous residence in this country from 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. See § 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 Immigration and Nationality Act (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. See 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 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. Here, the majority of submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on or about December 23, 1994. The applicant listed his date of birth as April 23, 1972 at part #3 of the Form I-687 application. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed "[REDACTED]" in Los Angeles, California from December 12, 1981 to October 1991. Further, the applicant failed to list any employment before April 1989 at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry.

In support of his claim of continuous residence in the United States since prior to January 1, 1982 through May 4, 1988, the applicant submitted an affidavit signed by [REDACTED] [REDACTED] stated that he met the applicant in the neighborhood on an unspecified date while he [REDACTED] [REDACTED] was working as a gardener and that they subsequently worked together for the same employer. Although [REDACTED] testified that the applicant lived at [REDACTED] in Los Angeles, California from December 1981 to October 1991, the probative value of his testimony is limited in that he failed to attest to the specific date he first met the applicant and how he had direct knowledge of the address where the applicant had purportedly lived since December 1981.

The applicant included affidavits signed by [REDACTED] and [REDACTED] respectively. In his affidavit, [REDACTED] stated that he met the applicant through his brother [REDACTED] and that he and his brother had known him since 1987. In his affidavit, [REDACTED] declared that he had met the applicant in the neighborhood in 1987 and that they subsequently worked together for the same employer. Although [REDACTED] and [REDACTED] both provided a listing of the applicant's addresses of residence in this country since December 1981, this testimony is diminished in probative value because both individuals acknowledged that they first met the applicant in 1987. As such, neither [REDACTED] nor [REDACTED] has provided any testimony to support the applicant's claim of residence in the United States from prior to January 1, 1982 through 1986.

Subsequently, on August 24, 2001, the applicant submitted his Form I-485 LIFE Act application. The applicant failed to include any new evidence in support of his claim of residence in the United States for the requisite period. The record shows that the applicant appeared for the required interview relating to his LIFE Act application on October 29, 2002. The notes of the interviewing officer reflect that the applicant testified under oath that he first entered this country by crossing the border from Mexico without inspection when he was ten years old on December 19, 1981. The

applicant claimed that he was paid cash to wash cars, clean yards, and perform errands for people until 1991 when he began working with a Social Security number. However, the applicant failed to offer any explanation as to why he did not list this employment at part #36 of the Form I-687 application, but rather listed his first employment in this country as occurring in April 1989.

On July 2, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS' intent to deny his LIFE Act application because of the fact that he had failed to submit sufficient credible evidence of continuous unlawful residence in the United States for the period in question. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period. The record shows that the applicant failed to respond to the notice.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on September 16, 2004.

On appeal, counsel asserts that the applicant's own testimony taken in conjunction with affidavits submitted in support of his claim of residence are sufficient evidence to establish his eligibility to adjust to permanent residence under the provisions of the LIFE Act. Counsel cites the holding reached in *Vera-Villegas v. Immigration and Naturalization Service*, 330 F.3d 1222, 1225 (9th Cir. 2003) to support his assertion. In *Vera-Villegas*, the Ninth Circuit found that the testimony of three live witnesses, as well as the testimony contained in eight cited affidavits and additional uncited affidavits, all tended to corroborate with detail and specificity the plaintiff's testimony that he resided in the United States since 1989. *Id.* The current case is readily distinguished in that the applicant has only provided three affidavits in which all of the affiants provided his address of residence in the United States since 1981, but two of the affiants acknowledge that they had not met the applicant until 1987 and the remaining affiant failed to specify the date he first became acquainted with the applicant. As noted above, the applicant testified under oath at his interview on October 29, 2002 that he first entered this country by crossing the border from Mexico without inspection when he was ten years old on December 19, 1981 and that he was paid cash to wash cars, clean yards, and perform errands for people until 1991 when he began working with a Social Security number. None of the affidavits submitted in support of the applicant's claim of residence contain specific and detailed testimony that would tend to corroborate these elements of the applicant's testimony relating to his residence in this country since prior to January 1, 1982. Further, the applicant failed to provide any evidence from the individuals he claimed paid him cash to wash cars, clean yards, and perform errands during the period in question. Moreover, the applicant, a ten year old minor child when he claims to have first entered the United States in December 1981, failed to submit any affidavits from the adults (whether his parents, relatives, or guardians) with whom he purportedly resided and who provided him with parental supervision and care at the [REDACTED] address in Los Angeles, California from such date through May 4, 1988.

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).

The absence of sufficiently detailed supporting documentation of any type whether contemporaneous or not seriously undermines the credibility of his claim of residence in this country for the requisite period, as well as the credibility of the evidence 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 three affidavits submitted by the applicant cannot be considered as relevant and probative because none contain specific and direct testimony that would tend to corroborate his claim of residence in this country for the entire requisite period. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he 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 supporting documents with minimal probative value and his own uncorroborated testimony, 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 as well.

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