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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: SEP 09 2008

MSC 02 248 61449

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

for 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, 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. The applicant provides additional documents along with copies of previously submitted documents in support of the appeal.

The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B)(i) 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 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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- A notarized affidavit from of Highland, California, who attested to the applicant's residence in the United States since May 1980.
- Notarized affidavits from and [redacted] of Lake Arrowhead, California, who attested to the applicant's residence in the United States since 1981.
  Documentation dated September 8, 1987 from the Rialto Adult Evening School in San Bernardino County, California.
- A statement indicating that the applicant considered himself to be self-employed from 1981 to 1987.

On April 10, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits contain insufficient information and without corroborative evidence, failed to substantiate the applicant's claim of continuous residence in the United States during the requisite period. The applicant, in response submitted:

- Page one of his parents' 1988 Form 1040, Individual Income Tax Return, which listed the applicant as a dependent.
- A notarized affidavit from his parents, and [redacted], who indicated that the applicant was declared as a dependent on their federal and state income tax from 1981 to 1987. The affiants asserted that during this period, the applicant was a minor and depended on them for financial support.
- A letter dated November 6, 2006, from [redacted], pastor of Our Lady of Guadalupe Catholic Church in San Bernardino, California, who indicated that the applicant has been a member of its parish since January 1981 and attested to the applicant's current address.

The applicant also submitted a declaration from his father, [redacted] who indicated, in pertinent part:

> We arrived here when [the applicant]was 10 years old and we did not sent [sic] him to school because people told us that the Immigration Agents were going to the schools and deporting all undocumented students and for the first years we truly believed that as a fact. We committed a big error in not investigating this tells [sic]. Now I m sorry we do not have all the required evidence to prove that he was in fact present in the United States. I am asking your officer [sic] to please accept this declaration along with some of our personal evidence to cover for the years that my son is missing.

The director, in denying the application, determined that the evidence submitted was insufficient to overcome the grounds for denial. On appeal, the applicant asserted, in pertinent part:

> I reaffirm the first stated on my interview I came in to the United States on 1981 and I have been living here since childhood. I did not attended [sic] school because my parents were taken by tell [sic] and conjectures of other people I started helping my father on [sic] a mechanic shop were the owner allow [sic] me to help in any thing possible for my age. As time passed by I got to work full time as a mechanic and forgot to go to school all my younger brother and sister assisted [sic] to school but me and that was until my parents realized that they were totally wrong

about the deportations of minors attending school. For these reason I am sending you letters from person that truly know me and I have been in touch since I came to the United State [sic].

My father filled [sic] taxes and I was on his taxes as dependent. I was active at the local church and parish in San Bernardino I came to know a lot of people there.

The applicant submits several affidavits from individuals who attested to the residence and employment of his father, [redacted], during the requisite period. These affidavits cannot be considered as they do not serve to establish *the applicant's* continuous residence and physical presence in the United States during the requisite period. The applicant also submits the following:

- **A notarized affidavit from** [redacted] of Fontana, California, who indicated that he has been acquainted with the applicant since June 1982 and has remained friends with the applicant since that time. The affiant asserted, "[s]ometimes [sic] in or around 1982 [the applicant] indicated to me that he tried to legalize his status through the amnesty program.
- A notarized affidavit from [redacted] of San Bernardino, California, who indicated that he has been acquainted with the applicant since 1981 and has remained friends with the applicant since that time. The affiant asserted, "[s]ometimes [sic] in or around 1981 [the applicant] indicated to me that he tried to legalize his status through the amnesty program.
- A notarized affidavit from [redacted] of San Bernardino, California, who attested to the applicant's residence in San Bernardino since March 1981. The affiant asserted that he met the applicant at Our Lady of Guadalupe Catholic Church.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988 as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. The applicant asserts that he did not attend school in the United States; however, the applicant indicated on his Form G-325A, Biographic Information, signed May 27, 2002, that he attended Rialto High School in Rialto, California from 1981 to 1986. No explanation has been provided for this contradiction.
2. [redacted] and [redacted] and [redacted] claimed to have first-hand knowledge of the applicant's residence in the United States since 1980 and 1981, respectively, but failed to state the applicant's place of residence during the period in question, provide details regarding the nature or origin of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence.

3. The letter from has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests.
4. The applicant indicated on his Form I-687 application to have been employed by R&B Auto Sales from 1987 to 1988; however, he failed to provide any evidence to support this employment.
5. [redacted] and [redacted] claimed to have known the applicant since 1981 and June 1982, respectively, but failed to state the applicant's place of residence during the period in question, provide details regarding the nature or origin of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. In addition, the affiants' assertions that in 1981 and 1982, the applicant indicated to them that he had tried to "legalize his status through the amnesty program" raise questions to the credibility of their affidavits as the application period for filing for the "amnesty" program did not commence until May 5, 1987 and ended on May 4, 1988.
6. The parents of the applicant assert that the applicant was claimed as a dependent on their federal and state income tax returns from 1981 to 1987. The applicant, however, has not provided any *certified* income tax returns to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The parents' 1988 Form 1040 has no probative value as it was not certified as being filed by the Internal Revenue Service.
7. The applicant claimed to have been self-employed from 1981 to 1987, but failed to submit documentation from the individuals for whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, the applicant indicated on his Form G-325A that he was employed by [redacted] and [redacted] from 1986 to 1987 and from 1987, respectively. The applicant claimed self-employment commencing in 1988. No explanation has been provided for these contradictions.
8. At item 33 of the Form I-687 application, the applicant claimed to have resided at [redacted] from 1981 to 1989. However, on his Form G-325A, the applicant indicated that he resided at [redacted] Rialto, California from 1981 to 1988. No explanation has been provided for this contradiction. It is noted that the father of the applicant did not provide the address where the applicant was purportedly residing 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).

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 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

"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 actually served, if any; or (2) a crime treated as a misdemeanor under 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).

The FBI record, via a fingerprint analysis, reflects that on October 14, 2001, the applicant was arrested by the Sheriff's Office in San Bernardino, California for driving under the influence of alcohol *with priors* and driving with .08 percent or more alcohol in the blood *with priors*. On December 6, 2005, and November 7, 2006, the director issued a Form I-72, which requested the applicant to submit certified court dispositions for *all* arrests including the arrest on October 14, 2001. The applicant, however, failed to respond to each notice.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for the benefit being sought as he has failed to provide the requested court dispositions necessary for the adjudication of the application. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal

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