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

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[redacted]

FILE: [redacted] Office: HOUSTON Date: SEP 0 9 2008

MSC 02 054 63221

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. 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, Houston, Texas, 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 submits an affidavit from [redacted] in an attempt to clarify the letters he had previously signed.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The FBI record, via a fingerprint analysis, reflects that on May 20, 2001, the applicant was arrested by the Sheriff's Office in Richmond, Texas for assault causing bodily injury upon a family member. The record contains a Misdemeanor Certificate of Fact from the Fort Bend County Clerk in Texas dated August 1, 2005, indicating that a review of the misdemeanor indexes from August 1, 1983 through August 20, 2005 was conducted and no misdemeanor cases were found in the applicant's name. The record also contains court documentation dated August 23, 2005, from the Fort Bend County District Clerk, who indicated that a search of its records from January 1, 1982 through August 23, 2005 found no felony criminal case against the applicant.

On two separate occasions, the director issued a Form I-72, which requested the applicant to submit certified court documents of all arrests. The applicant, in response, provided court documentation reflecting that he was convicted on August 23, 2005, for failing to wear a seatbelt on April 5, 2001 in Case no. TR51C0118007.

On March 21, 2006, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to submit certified court documents of his arrest on May 20, 2001, for assault causing bodily injury upon a family member. The applicant, in response, submitted documentation from the Sheriff's Office in Fort Bend County, Texas indicating that no probable cause was found in respect to the charge of assault upon a family member on May 20, 2001.

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 letter dated April 22, 1992, from [redacted], chief instructor of the Texas Branch of International Okinawa Goju-Ryu Karate-Do Federation (IOGKF) in Sugar Land, Texas. Mr. [redacted] indicated that the applicant has been a member of its federation since November 1981.
- A notarized affidavit from [redacted] of Houston, Texas, who indicated that she has been acquainted with the applicant since January 1988 and attested to the applicant's Houston residence at [redacted] The affiant asserted that she has remained friends with the applicant since that time.
- A notarized affidavit from [redacted], who indicated that the applicant "worked with me from February 1985 to 1988 as a bodyman."
- Notarized affidavits from [redacted] of Fresno, Texas, who indicated that the applicant was in his employ as a subcontractor in construction from December 1981 to August 1984. The affiant asserted that the applicant was given room and board during his period of employment.
- A notarized affidavit from [redacted] of Stafford, Texas, who indicated that he has known the applicant since May 1985 and that the applicant has continuously resided in the United States since that time.
- Notarized affidavits from [redacted] and [redacted] of Houston, Texas, who indicated that they have known the applicant since March and April 1985, respectively and that the applicant has continuously resided in the United States since that time.
- A notarized affidavit from [redacted], of Houston, Texas, who indicated that he has known the applicant since November 1981. The affiant based his knowledge of the applicant's

residence in the United States as he "sees [the applicant] on a 3/week basis" and that "we are members of the karate federation."
A notarized affidavit from [redacted] of Houston, Texas, who indicated to have known the applicant since December 1981. The affiant asserted, "[w]hen we met in 1981 we did not see each other much, but now we are living together." The affiant indicated that the applicant has been residing with her since February 1991.

- A letter dated July 20, 2001, from [redacted], pastor of Holy Family Parish in Missouri City, Texas, who indicated that he has personally known the applicant since 1985 and that the applicant has been an active member of its parish.

The record also contains documentation from a Form I-140, Immigrant Petition for Alien Worker, filed by the applicant on December 17, 1997. To support the Form I-140, the applicant submitted letters dated July 27, 1997 and July 24, 1998, from [redacted]. In his 1997 letter, [redacted] made a job offer to the applicant as an instructor. In his 1998 letter, [redacted] attested that the applicant has been a karate student at his facility since 1990.

On August 4, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that he had provided conflicting evidence. Specifically, the applicant indicated that he entered the United States in December 1981; however, [redacted] and [redacted] indicated that the applicant had been a member of the same martial arts school in Sugar Land, Texas a month before his arrival in the United States. The director also advised the applicant that on his Form I-687 application signed January 6, 1991, the applicant listed his initial address in the United States from November 1984 and listed his initial employment commencing in February 1985.

The applicant, in response, asserted, in pertinent part:

> I was invited by [redacted] and [redacted] to join their karate martial arts school in November of 1981 in Mexico. They invited me to come to the United States to become part of their school, and I accepted. The month after [redacted] and [redacted] gave their invitation I arrived in the United States. Therefore, both statements are correct. Since I had a been a member of their school before I arrived in the United States.
>
> The Service also finds a discrepancy in the fact that my application states that my first job was in 1985, four years after I arrived in the United States. Furthermore, my application stated that my first address in the United States in 1984. These are mistakes on my application. In order to clarify this I offer the Service the following. I arrived in the United States in 1981 and I moved into [redacted], Fresno, TX with a friend name [redacted]. During that time I worked with [redacted] doing various carpentry and maintenance work.
>
> In November of 1984, I moved in with some friends including [redacted] at [redacted] Houston, TX. Shortly thereafter, in 1985, I began working as a bodyman.

The applicant submitted an additional affidavit notarized August 14, 2006, from [redacted] who indicated that he has known the applicant for over 20 years and that the applicant resided with him when he first arrived in the United States at [redacted] Fresno, Texas. The affiant also indicated that the applicant was in his employ in his subcontracting business.

In denying the application, the director noted, in pertinent part:

> In support of the [Form I-140] application, you submitted a letter provided by [redacted] offering you a job as an instructor at his martial arts school. [redacted] states in this letter that you have been a member of his school since 1990. The address of the school is the same as the one that [redacted] previously stated that you had been a member of since November 1981. The Service has carefully weighed all the evidence in the file and determined that you have not overcome the Service's decision to deny your application based on the findings in the Notice of Intent to Deny.

On appeal, counsel asserts, in pertinent part:

> When [redacted], petitioned for our client, and wrote an affidavit stating that our client had been a member of his school since 1990, he was speaking correctly. However, the distinction is that he was a member of the [redacted] ***new*** school since 1990. [redacted] intention was never to suggest that [redacted] had not been practicing karate with him since 1981.

Counsel submits copies of two previously submitted letters from [redacted] along with a new letter dated October 14, 2006, from [redacted] now president of Pan-American Okinawa Goju-Ryu Karate Federation, in Sugar Land, Texas, who asserted, in pertinent part:

> One letter dated back stated that [the applicant] joined our Federation in 1981. The other letter dated July 24, 1998 stated the he join my Karate Center in 1990 to train with the Texas karate team.
>
> Both dates are correct. When he joined our Federation back in 1981, I was representing another karate body with Karate dojos training Center I many parts of the country. You can see that because the logo is different.
>
> In January 1 1990 I left the International Okinawa Goju-ryu Karate do Federation to form my own Pan-American Okinawa Goju-Ryu Karate Do Federation to persuit [sic] other interest. At that time [the applicant] was an active competitor and he decided to join my karate center to receive personal instruction and to train with the Texas TEAM.
>
> You can see the changes because the logo also changed with the Federation Change.
>
> I hope this clarifies the diffrences [sic] in dates on both letters.

The statements issued by the applicant and counsel 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. Specifically:

1. [redacted] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.
2. The applicant asserts that there are mistakes on his Form I-687 application signed on January 6, 1991. However, the applicant, in affixing his signature on item 46 of his Form I-687 application, certified that the information he provided was *true* and *correct.* The applicant has not provided a plausible explanation why he did not claim employment and residence

prior to November 1984 on this application. Items 33 and 36 specifically require the applicant to list *all* employment and residence in the United States since first entry.

3. [redacted] and [redacted] indicated that they have known the applicant since 1985, 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.
4. The letter from [redacted] 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. In addition, on his Form I-687 application, the applicant did not list any affiliation with a religious organization until February 1988 and the religious organization listed is not the same church as attested to by Reverend Valencia.
5. [redacted] cannot attest to the applicant's *continuous* residence in the United States as she indicated that she did not see much of the applicant until she started living with the applicant in 1991.
6. The applicant asserted that he was invited by [redacted] to join a martial arts school in November 1981 in Mexico. However, in his affidavit, [redacted] did not corroborate the applicant's assertion. [redacted] did attest to the applicant's residence in the United States since 1981, but failed to state the applicant's place of residence during the period in question or provide details regarding the nature or origin of his relationship.
7. [redacted] indicates that the applicant was a member of the International Okinawa Goju-Ryu Karate-Do Federation from 1981 to 1990. However, on his Form I-687 application signed January 16, 1991, the applicant did not list any association with a club or organization during the requisite period. In addition, [redacted] in his letter dated July 24, 1998, asserted that the applicant had previously represented Team USA for the IOGKF-USA, but no evidence such as application forms, awards or certificates of recognition was provided to support this assertion. Finally, [redacted] letters have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v).

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.

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