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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 2 9 2009

MSC 02 240 63393

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Los Angeles, California, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had failed to assist United States Citizenship and Immigration Services or USCIS (formerly Immigration and Naturalization Service or the Service) as required under 8 C.F.R. § 245a.18(e), because he had not provided requested court documents relating to his criminal history. The director further determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application.

On appeal, the applicant contends that he submitted a response to the notice of intent to deny that was not acknowledged by the director in the notice of denial. The applicant provides copies of postal receipts for the mailing of this response to USCIS. Therefore, the applicant's response to the notice of intent to deny shall be incorporated into the appeal.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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. 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 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 "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.* At 80. 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. *Id.*

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, 431 (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.

The first issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on January 14, 1991. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, the applicant listed [redacted]" Further, at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed his addresses of residence as '[redacted]' in Los Angeles, California from December 1981 to August 1982 and '[redacted]" in Los Angeles, California from August 1982 through at least the end of the requisite period on May 4, 1988. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed one absence from this country when he traveled to Mexico because his mother was ill from July 4, 1987 to August 20, 1987.

Subsequently, the applicant filed his Form I-485 LIFE Act application on May 28, 2002. With his Form I-485 LIFE Act Application, the applicant included a Form G-325A, Report of Biographic Information. At that part of the Form G-325A biographic report where applicants were asked to list information relating to their spouse, the applicant acknowledged that he had

been married in Mexico on December 12, 1986. The fact that the applicant acknowledged that was married in Mexico on this date directly contradicted his prior testimony that he had only one absence from this country during the entire requisite period when he traveled to Mexico in 1987 at part #35 of the Form I-687 application. This discrepancy raises questions relating to the number and length of his absences from the United States in the period in question as well as his claim that he continuously resided in this country from prior to January 1, 1982 through May 4, 1988.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an employment letter containing the letterhead of [redacted], in Pico Rivera, California that is signed by [redacted]. Mr. [redacted] declared that "..[redacted] AKA: [redacted] with social security number [redacted] was employed in our company from 8-1982 to 12-1982." However, [redacted] declaration was not made under oath and is too general and vague to be considered as sufficient to establish that the applicant and [redacted] are one and the same person pursuant to 8 C.F.R. § 245.2(d)(2)(ii). In addition, [redacted] did not provide the applicant's address during his employment with this enterprise, did not state the applicant's duties, and failed to provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided three photocopied earnings statements from [redacted], dated August 2, 1981, August 23, 1981, and October 11, 1981 **reflecting** the earnings of [redacted] Nevertheless, these earnings statements contain no **indication** that the applicant and [redacted] are one and the same person.

The applicant included two separate affidavits both of which are dated August 13, 1990 and signed by [redacted]. In her affidavits, [redacted] attested to the applicant's residence in the United States from August 1982 through the date the affidavits were executed, provided a listing of the applicant's addresses of residence in that period, and noted that the applicant had

been absent from this country in 1987. However, the probative value of [redacted] testimony is limited as she failed to attest to the applicant's residence in this country from prior to January 1, 1982 until August 1982.

The applicant submitted an employment letter containing the letterhead of Contempo Metal Finishers in Los Angeles, California that is signed by [redacted]. [redacted] stated that this company employed the applicant to plate chrome on a fulltime basis with a salary of $5.00 per hour from February 1983 to December 1988 and provided the applicant's address of residence during this period. Regardless, [redacted] did not provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided affidavits that are signed by [redacted] and [redacted], respectively. While the affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant included seventeen photocopied envelopes containing Mexican postage stamps that were purportedly mailed from Mexico to the applicant at addresses in the United States. While the majority of these photocopied envelopes do not contain a legible postmark, it appeared that one of the envelopes was postmarked February 2, 1983. The AAO issued a notice to the applicant on December 17, 2008 indicating that this postmarked envelope was fraudulent because stamps on the envelope had been issued after the February 2, 1983 postmark. In response, counsel provides the original envelope rather than a photocopy. A review of the original envelope reveals that the postmark on the front of the envelope had been obscured as postmarks on the back of the envelope showed it had been mailed in February of 1988 rather than 1983. Consequently, the AAO withdraws the finding of fraud regarding the envelope in question. Regardless, the addresses where the all of these envelopes were mailed to the applicant, [redacted] in Los Angeles, [redacted] in Huntington Park, California, and [redacted] in Huntington Park, California were not listed as addresses of residence by the applicant at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry. The fact that these envelopes were not mailed to the applicant at addresses he claimed as his residences in this country during the requisite period seriously impairs the probative value of the envelopes.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status since prior to January 1, 1982 and, therefore, denied the Form I-485 LIFE Act application on September 7, 2007.

On appeal, the applicant reiterates his claim of residence in the United States for the requisite period and claims that had only been absent from this country once during the period in question when he visited his ill mother in July and August of 1987. However, as noted previously the

applicant acknowledged that he had been married in Mexico on December 12, 1986 on the Form G-325A biographic report that was included with his Form I-485 LIFE Act application. The fact that the applicant has once again offered contradictory testimony relating to the number and length of his absences from the United States in the period in question only serves to further undermine his own credibility as well as the credibility of his claim that he continuously resided in this country from prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the evidence 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the conflicting and contradictory testimony cited above seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents 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 applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period 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 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and conflicting nature of testimony contained in the record, 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.

The next issue to be examined in this proceeding is whether the applicant has submitted sufficient documentation relating to his criminal history to determine that he is admissible to the United States under the provisions of section 212(a) of the Act as required by 8 C.F.R. § 245a.12(e).

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. 8 C.F.R. § 245a.12(e).

Declarations by an alien that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to verification by the Service or its successor USCIS. The alien must agree to fully cooperate in the verification process. Failure to assist the Service or its successor USCIS in verifying information necessary for proper adjudication may result in denial of the application. 8 C.F.R. § 245a.18(e).

The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application on August 25, 2006. The notes of the USCIS officer who conducted the applicant's interview reveal that the applicant admitted he been arrested in 1983 for a stolen vehicle, in 1984 for a stolen vehicle, in 1991 for a stolen vehicle, in 1996 for driving under the influence, and again in 1996 possession of false documents. The record reflects that at the conclusion of the interview the applicant was issued a Form I-72, Request for Additional Evidence, which requested that he provide original court certified dispositions for all of his arrests from 1983 to August 25, 2006.

In addition, it must be noted that the record contains a copy of the results of the applicant's Federal Bureau of Investigation fingerprint check dated August 18, 2006. This document reflects that based upon fingerprint comparison the following information relating to the applicant's criminal history:

- An arrest on December 27, 1983 for vehicle theft by the Santa Monica, California Police Department with agency case number [redacted]

- An arrest on January 6, 1984 for grand theft auto under the name [redacted] by the Sheriff's Office of San Bernardino County, California with agency case number [redacted] and subsequent conviction in the Superior Court of San Bernardino County, California for a violation of section 10851, *Taking a Vehicle without the Owner's Consent Vehicle Theft,* of the California Vehicle Code with a sentence of 365 days in jail and three years of probation;

- An arrest on April 1, 1991 for grand theft vehicle under the name [redacted] Ballesteros by the Bell Gardens, California Police Department with agency case [redacted] and subsequent dismissal of all charges in the Superior Court of Los Angeles, California;

- An arrest on June 3, 1996 for vehicle theft by the Sheriff's Office of San Bernardino County, California with agency case number [redacted]

- An outstanding warrant for vehicle theft issued on August 12, 1996 by the Sheriff's Office of San Bernardino County, California with agency case number [redacted]; and,

- An arrest on December 5, 1996 for illegal entry into the United States and possession of false documents under the name [redacted] by the Service.

The record shows that as of the date of this decision, the applicant has submitted only court certified dispositions relating to his arrest on April 1, 1991 for grand theft vehicle under the name [redacted] by the Bell Gardens, California Police Department with agency case [redacted] and subsequent dismissal of all charges in the Superior Court of Los Angeles, California. The applicant has failed to provide requested court certified dispositions relating to the remainder of the arrests cited above. Therefore, the applicant has failed to establish that he is admissible to the United States under the provisions of section 212(a) of the Act as required by 8 C.F.R. § 245a.12(e). Consequently, the applicant is 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.