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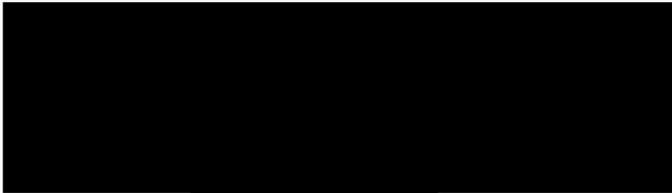
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 015 61024

Office: LOS ANGELES

Date: JUL 13 2006

IN RE:

Applicant:



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:



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 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director failed to properly weigh the evidence and abused her discretion in denying the application.

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. Section 1104(c)(2)(B) 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 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.

Although Citizenship and Immigration Service (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant states that he first came to the United States in 1960 pursuant to the *Bracero* Program. The applicant does not indicate when he returned to Mexico, but stated that he reentered the United States illegally in May 1981.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted 16 affidavits attesting to his continued residency and presence in the United States. Affidavits

in certain cases can effectively meet the preponderance of evidence standard. However, in this instance, the information contained in some of the affidavits and statements are inconsistent or at variance with the claims made by the applicant on the application. These inconsistencies and variances include:

1. The applicant stated on his Form I-687, Application for Status as a Temporary Resident, dated June 16, 1990, that he lived at [REDACTED] in Los Angeles from 1981 to 1987, and at [REDACTED] in Los Angeles from 1988 to the date of the Form I-687. The applicant submitted a June 13, 1990 sworn statement from [REDACTED] in which she stated that she lived at [REDACTED] in Los Angeles and that the applicant was her tenant at [REDACTED] in Los Angeles from September 1981 to October 1987. In an interview with Officer [REDACTED] the applicant stated that he lived on [REDACTED] and on [REDACTED] however, in an interview with Officer [REDACTED] the applicant stated that from 1981 to 1988, he lived at about six different places.

On appeal, the applicant states:

From September of 1981 until October 1987, I lived at [REDACTED] Los Angeles, CA 90063. I rented a garage room in Ms. [REDACTED]'s house and [paid] about \$75.00 a month in rent.

The applicant submitted no evidence to explain the inconsistencies between his statements and those of his landlord's. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

2. The applicant stated on his Form I-687 that he worked for [REDACTED] from 1981 to 1987, and [REDACTED] from 1988 to the date of the Form I-687 (June 16, 1990). The applicant submitted a June 7, 1990 sworn statement from Mr. [REDACTED] in which he stated that the applicant worked for him as a gardener-handyman from September 1981 to November 1987. In a September 20, 2001 sworn statement, the applicant stated that from 1981 to 1988, he worked as a lawn maintenance man, cleaned houses and sold food for public consumption, and that in 1988 began working for [REDACTED]. The applicant stated that he worked for the company until 1990, when he became a self-employed peddler.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted a May 31, 2004 sworn affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 "because he was my business partner." Mr. [REDACTED] does not indicate the nature of the business in which he and the applicant were engaged, and the applicant does not indicate that he was engaged in a partnership with any other individual. This statement also contradicts the statement of the applicant and Mr. [REDACTED] who stated that the applicant worked for Mr. [REDACTED] from 1981 to 1987.

On appeal, the applicant states:

From 1981 until on or about 1988, I worked as an ice cream vendor, a gardner [sic], I worked in construction, and cleaned homes. I was always paid in cash. Then from 1988 to on or about 1996, I worked for a company by the name of [REDACTED]

I have been self employed [sic] since 1996 as a street vendor.

The record contains a September 7, 2001 certification from the vice president of [REDACTED] Company, reflecting that the applicant worked for the company from May 11, 1988 through May 25, 1990. The record contains no evidence to resolve these inconsistencies. *Id.*

3. The applicant submitted a September 4, 2001 sworn affidavit from [REDACTED] who stated that he is a friend of the applicant and can attest that the applicant has resided in the United States "without leaving the country since 1975 to this present date." This contradicts the applicant's statement that he re-entered the United States without inspection in May 1981, and that he left again for approximately a month in 1987 because his wife was ill. Thus Mr. [REDACTED] statement is not credible.

The applicant submitted no contemporaneous documentation to corroborate his residency and presence in the United States during the qualifying period. Given the absence of any contemporaneous documentation and the unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period. Accordingly, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

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