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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: LOS ANGELES

Date: JUN 23 2006

MSC 02 063 61463

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. Wichmann, 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 concluded that the applicant's documentation submitted was at variance with the information initially provided on his Form I-687 application, thereby casting credibility issues on his claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As such, the director denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel addresses each inconsistency the director put forth in her notice. Counsel provides copies of previously submitted documents in support of the appeal.

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. 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Form 1040s, Individual Income Tax Return and Form 540s, California Long Tax Form for the tax years 1982 through 1988.
- An envelope purportedly postmarked December 7, 1987 to the applicant at [REDACTED] North Hollywood, California.
- Four Pacific Telephone bills purportedly issued on May 11, 1981, November 11, 1982, November 11, 1984 and December 11, 1985 and addressed to the applicant at [REDACTED] North Hollywood.
- Two Pacific Telephone bills issued on August 11, 1987 and February 8, 1988 and addressed to the applicant at [REDACTED] North Hollywood, California.
- Rent receipts for July 1, 1987 to August 1, 1987 and for May 1, 1988 to June 1, 1988 for the address at [REDACTED] North Hollywood.
- A letter dated January 1, 1988 from [REDACTED], general manager of [REDACTED] in El Sereno, California, who indicated that the applicant has been in his employ as a seller since June 1987.
- An affidavit notarized May 1, 2003 from [REDACTED] of Los Angeles, California, who indicated that he first met the applicant at a park located in North Hollywood in February 1981. Mr. [REDACTED] attested to the applicant's residence with [REDACTED] at [REDACTED] North Hollywood from 1981 to 1983. Mr. [REDACTED] asserted that in 1986, he assisted with moving the applicant into his new residence at [REDACTED] North Hollywood.

On May 7, 2003, the director issued a Form I-72, requesting that the applicant submit a social security printout of his earnings for 1981 through 1988. Counsel, in response, submitted a printout dated August 5, 2003 from the Social Security Administration Office in Los Angeles, California, which reflected the applicant's earnings from 1994. A statement from a representative of the Social Security Administration indicating "self employment earnings are currently being investigated for reinstatement to this person earning record. Expected time of completion is not known" was handwritten on the printout.

In response to the Notice of Intent to Deny issued on July 28, 2004, counsel submitted copies of documents previously provided along with:

- A declaration from [REDACTED] who indicated that he first met the applicant at a friend's residence in Hollywood, California in 1981. Mr. [REDACTED] asserted that the applicant would come to the residence to deliver milk and milk products. Mr. [REDACTED] indicated that although he now resides in Oregon, he has remained friends with the applicant since that time.
- A declaration from [REDACTED] of Los Angeles, California, who indicated that she has known the applicant since May 1981. Ms. [REDACTED] asserted that her mother employed the applicant in yard work, minor paint jobs and to lift and move heavy furniture around her home. Ms. [REDACTED] stated that the applicant informed her and her mother of his part-time job; selling and delivering products.

- An Annual Installment Agreement Statement from the Internal Revenue Service (IRS), which reflected the applicant's installment agreement activity from July 8, 2002 to June 2, 2003 for back taxes paid for the tax years 1982 through 1988.

The director, in denying the application, noted that the documents submitted in response to the Notice of Intent to Deny contradicted with his claim on his Form I-687 application. Specifically, the affidavits submitted attested to the applicant's employment as a milk deliveryman; however, the applicant claimed on his Form I-687 application to have been employed as a taxi driver during the requisite period. The director also noted that the telephone bill issued in 1981 included an Emergency Telephone Users Surcharge, which according to the California Board of Equalization was not imposed until November 1982.

Regarding the applicant's employment, counsel, on appeal asserts in part:"

However, [the applicant] has never been a taxi driver. His employment with the Union De Taxistas Independientes (UTI) consists of doing office duties. See Exhibit 2, attached to this appeal and incorporated by reference. However, since [the applicant's] primary language is Spanish, he failed to distinguish the fact that he was not actually a driver but an office worker in the company when he filed his I-687 application. Further, [the applicant], like millions of immigrants in the USA, has maintained many different jobs while in the United States.

Like [the applicant], many aliens have multiple jobs working in various fields in order to support their families. The evidence provided to the Service, overwhelmingly established his various occupation including being a milk deliveryman, doing yard work, and office work. The fact that he failed to mention his other jobs in his application is not conclusive evidence that he only had one position since 1981. Often time immigrants do not place in their applications menial short-term jobs. Usually the information relates to the long-term jobs, usually years, at work. In this case [the applicant] concentrated in entering only one long-term job.

The statements of counsel on appeal submitted in response to the Notice of Intent to Deny and on appeal have been considered. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982 through May 4, 1988 as a review of the contents in the application at hand and the applicant's prior A-file () contains numerous contradicting information, specifically:

1. Counsel, in response to the Notice of Intent to Deny, asserted that () declared under penalty of perjury that the applicant had worked for him at () "first as a delivery man from May of 1981 and as a seller since June 1987." The record contains two letters dated May 25, 1982 and January 1, 1988 from (). The letter dated January 1, 1988, attested to the applicant's employment "since June 1987" and was signed by (). The other letter attested to the applicant's employment since May 1981, but was not signed by Mr. () and, therefore, has no probative value or evidentiary weight. In addition, the applicant's prior A-file contains is a letter dated March 1993 from () who indicated that the applicant "was self-employed as an independent driver at our company during the month of November 1992." If () employed the applicant prior to 1987, it is unclear why neither affiant attested to such employment in their letters dated in 1988 and 1993.
2. Counsel, on appeal, asserts that the applicant chose to list his "one long-term job" on his Form I-687 application even though he was engaged in other employment during the requisite period.

The applicant indicated on his Form I-687 application (dated February 15, 1995) that he was employed by Union De Taxistas Ind. as a taxi driver from January 30, 1981 to the present. The applicant presented no evidence from Union De Taxistas Independientes at the time he filed his Form I-687 and LIFE applications to corroborate this employment claim. However, the applicant's prior A-file contains a letter dated July 24, 1995 signed by the president of Union De Taxistas Independientes, who attested to the applicant's employment "since Dec. 1994." Not only is this employment short-term, it is subsequent to the requisite period, and contradicts the applicant's claim on his Form I-687 application. As such, counsel's assertion has no merit.

3. Counsel asserts that the applicant has never been a taxi driver. However, not only did the applicant indicate on his Form I-687 application that he was employed by Union De Taxistas Independientes as a taxi driver, he also indicated on his Form G-325, Biographic Information dated November 15, 2001 that he was a self-employed taxi driver.
4. The applicant's prior A-file contains a Form I-589, Application for Asylum previously filed by the applicant on January 26, 1995. At part 1, item 16, of the Form EOIR-40, Application for Suspension of Deportation, the applicant was requested to list his residence during the last 10 years. The applicant, however, listed no address prior to 1986. At part 3, item 19 of the Form EOIR-40, the applicant indicated that his first entry into the United States was in 1986. At part 3, item 25, of the Form EOIR-40, the applicant claimed no absences from the United States since the date of his first entry.
5. The prior A-file also contains a transcript of the testimony of record that occurred during deportation proceedings on July 26, 1995. A review of the transcript indicated the applicant informed the immigration judge that May 2, 1986 was the first time he entered the United States and he had not departed the United States since that time. The immigration judge's oral decision indicated that the applicant first entered the United States in May 1986 and no evidence of departures had been shown. This information directly contradicts the applicant's claim on his Form I-687 application to have entered the United States in January 1981.
6. The transcripts also indicated the applicant informed the immigration judge that he has been a member of the [REDACTED] since 1990 and that he did not belong to any other church prior to 1990. This information directly contradicts the applicant's claim on his Form I-687 application to have been affiliated with [REDACTED] since January 1981.

It is noted that the applicant's Form I-589 was subsequently withdrawn.

7. Counsel, on appeal, asserts that the applicant made only "one trip to Mexico in September 1987." However, the record reflects that the applicant was married in Mexico on January 13, 1982 and has three children born July 13, 1981, June 21, 1982 and January 14, 1984 in Mexico. In addition, at the time of his LIFE interview, the applicant indicated that he departed the United States in 1986 for approximately a month and that his spouse visited the United States on three separate occasions during the requisite period; May 1981 for a couple of months, July 1982 for three months, and during 1985. The spouse's visits to the United States do not coincide with the birth of her second and third child and, therefore, it would indicate that the applicant was in Mexico, with his spouse, on or about nine months prior to his children's births. These facts taken together along with the applicant's failure to disclose *all* of his departures and list his children on his Form

I-687 application are a strong indication that the applicant was not in the United States during these timeframes.

It is noted that on his LIFE application, the interviewing officer indicated that the first child [REDACTED] born in 1981 was not the applicant's. The applicant, however, claimed [REDACTED] to be his own on the Form I-589, and the transcript of hearing dated July 5, 2005 indicated the applicant replied yes when asked if he was the father of [REDACTED] by the immigration judge.

8. The twenty-cents stamp postmarked on the 1987 envelope raises questions to its credibility as the United States Postal Service increased its domestic postal rate to twenty-two cents on February 17, 1985.¹ There is no evidence to suggest that the envelope was returned due to insufficient postage.

These factors raise grave questions about the authenticity of the Pacific Telephone bills dated prior to May 1986 and the affidavits from the affiants attesting to the applicant's residence in the United States since before January 1, 1982 through May 1, 1986.

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 applicant informed the immigration judge during his deportation hearing, that 1994 was the first year he attempted to file taxes. The AAO does not question the IRS documentation, as it appears that based on the applicant's statement and/or documentation presented to the IRS subsequent to 1988, the agency imposed penalties and interests for the tax years of 1982 to 1988. Like a delayed birth certificate, the amended tax returns and the late filing of the Form 1040s and the Form 540s years after the claimed transaction raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Immigration and Nationality Act, 8 C.S.C. § 1154(b); *see also Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Given the numerous 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.

¹ See http://www.usps.com/history/history/his4_5.htm.