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

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[Redacted]

FILE: [Redacted]
MSC 02 066 60915

Office: LOS ANGELES

Date: **OCT 12 2006**

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed

The 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 contends that the applicant has adequately addressed the issues of credibility raised by the director and the evidence of residency submitted is sufficient to demonstrate that the applicant has continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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 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 Services (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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

In the Notice of Intent to Deny (NOID), the director stated that the evidence submitted by the applicant to demonstrate that he worked under the name ██████████ consisted only of "a fraudulent 'Alien Registration Receipt Card' and fraudulent Social Security card." The director found that this evidence was insufficient to show that the applicant had actually used the name ██████████ the name that appears on much of the applicant's remaining evidence of residency. However, the applicant also submitted three affidavits from former co-workers in support of his claim, none of which are discussed in the director's decision.

The director also determined that the rent receipts submitted by the applicant as evidence of residency in 1983 were not authentic because the form on which they were written was not in circulation until 1984. However, counsel had previously explained in a letter dated November 5, 2003, and reiterated in a letter responding to the NOID, that "the landlord that received the rent payments in 1983 issued the receipts for March, 1983 and April 29, 1983 to [the applicant] sometime in approximately 1990."

In the decision, the director did not specify any actual deficiencies in the affidavits or other evidence, but stated only that the "information [the applicant] submitted . . . failed to overcome all the grounds for denial stated in the NOID." As stated in *Matter of E--M--*, *supra*, the director cannot refuse to consider affidavits, or any form of evidence relating to the 1981-88 period.

Nevertheless, though it appears that the director failed to consider some of the evidence of residency submitted by the applicant, the AAO finds that the submitted evidence is not relevant, probative and credible.

In his declaration dated October 24, 2001, the applicant states that he worked at a restaurant known as Rod's Grill under the name ██████████ from 1978 to approximately 1986. This employer is not listed on the applicant's I-687. In addition, the applicant states in his declaration that he worked full-time at the Cheyenne Supper Club, again using the name ██████████ from approximately 1983 to approximately 1994. The applicant's I-687 lists the dates of employment at the Cheyenne Supper Club as December 1984 until December 1986. Finally, the applicant states in his declaration the he worked at the Greenscapes landscaping company in 1985. This employer is not listed on the applicant's I-687. The applicant's I-687 lists two employers for which the applicant performed services as a gardener, but the applicant's employment with these employers did not occur during 1985.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the applicant provided a reasonable explanation for the inconsistency

involving the 1983 rent receipts and submitted affidavits to support his claim of working under a different name with fraudulent documents. However, these affidavits do not resolve the inconsistencies between the applicant's declaration and his I-687.

As the applicant has not submitted credible evidence of residency, he therefore has not met his burden of proof in showing that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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