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U.S. Citizenship
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Services

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[REDACTED]
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FILE: [REDACTED]
MSC 02 052 61511

Office: LOS ANGELES

Date: SEP 11 2006

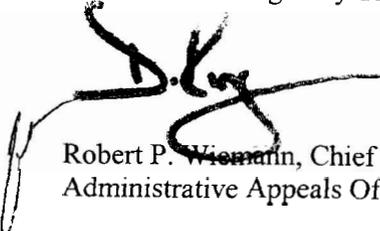
IN RE: Applicant: [REDACTED]

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: Self-represented

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. Wisnaff, 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 determined that 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. The director also determined that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period. Accordingly, the director denied the application.

On appeal, the applicant provides additional postmarked envelopes along with 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:

- An affidavit from [REDACTED] of El Monte, California, who attested to the applicant's friendship and moral character.

- An envelope postmarked December 30, 1987 from the applicant's address at [REDACTED] Bell, California.
- An indecipherable postmarked envelope, which the applicant claimed was mailed in 1988
- Several pay stubs issued during November and December 1985 and January 1986.
- A letter dated October 13, 1993 from [REDACTED] manager of [REDACTED] at [REDACTED] Downey, California, who indicated that the applicant has been a full-time employee since 1984.
- A letter dated April 10, 1988 from [REDACTED], operations officer at [REDACTED] Company at [REDACTED], Downey, California, who indicated that the applicant had been an independent contractor since March 1985, and on March 29, 1988, the applicant became an employee of its company.
- A letter dated April 7, 2003 from [REDACTED] president of [REDACTED] who attested to the applicant's employment as a helper and carpet layer since March 1986.
- A letter dated April 10, 2003 from Father [REDACTED], pastor of [REDACTED] Catholic Church in Pico Rivera, California, who indicated that the applicant is a registered member and has been a parishioner since 1981.
- An affidavit from [REDACTED] of Pico Rivera, California, who indicated that she has known the applicant since 1981. Ms. [REDACTED] asserted that the applicant did some carpeting jobs for her in the past.
- An affidavit from [REDACTED] of Pico Rivera, California, who indicated that she has known the applicant since 1980, and that the applicant and his mother resided with her for several years.
- An affidavit from [REDACTED] of Whittier, California, who indicated that she has known the applicant since 1981. Ms. [REDACTED] asserted that she became friends with the applicant while he was residing at her parents' home.
- A receipt from [REDACTED] in Bell, California dated February 2, 1987.
- A METLIFE health maintenance organization card issued May 1, 1988.
- A marriage license and certificate dated March 4, 1988 in New Mexico.
- A Form I-72 dated April 9, 1988 and addressed to the applicant's former spouse regarding a Form I-130, Petition for Alien Relative.

The applicant also submitted:

- Several envelopes postmarked during the requisite period; however, these envelopes cannot be considered as they were addressed to and from someone than the applicant.
- A letter dated April 30, 2003 from a representative of the Huntington Park/Bell Community Adult School, who indicated that although the applicant claimed to have been a student at its facility during 1986, his name did not appear in the school's computer system and the applicant had no evidence to support his claim.

The director issued a Notice of Intent to Deny dated September 17, 2004, advising the applicant that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through May 4, 1988. The applicant, in response, asserted that he had written to the Los Angeles Public Records in an effort to obtain evidence of his enrollment at the [REDACTED] Community Adult School during the period in question.

In regards to the envelopes submitted with his LIFE application, the applicant indicated, "these documents are in your possession and prove that in fact I entered the country as required..." As previously noted, except for the envelope postmarked on December 30, 1987, the remaining envelopes cannot be considered as they were either addressed to and from someone other than the applicant or were postmarked subsequent to the period in question.

Regarding his employment, the applicant asserted that in addition to his employment at [REDACTED] Company, he worked for another establishment, but the business was destroyed in the Whittier earthquake. The applicant stated that the employment documents previously provided clearly established his employment.

Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer since his first entry, the applicant only listed his employment with [REDACTED] Company. As such, the applicant's claim to have been employed by another establishment during the requisite period raises questions of credibility .

On appeal, the applicant submits envelopes postmarked December 12, 1980, September 3 and 4, 1985, June 10, 1986 and September 19, 1986. The applicant also submits a photograph of himself, which he claims was taken at the Adult School in Bell, California.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through August 1985. Specifically:

1. The employment documents submitted by the applicant raise questions of credibility as each affiant attested to a different employment date for the applicant; [REDACTED] and [REDACTED] attested to the applicant's employment since 1984 and March 1985, respectively while [REDACTED] attested to applicant's employment since March 1986. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from the affiants has been submitted to resolve the contradicting letters. As such, the employment letters from the affiants have little probative value or evidentiary weight. It is noted that the applicant on his Form G-325A, Biographic Information listed his employment with Target Carpet since 1985.

2. The envelope postmarked December 12, 1980 also raises questions of credibility as the applicant indicated that he first entered the United States in November 1981.
3. [REDACTED] in his affidavit, only attested to his friendship with applicant, but made no knowledge of the applicant's residence in the United States.
4. [REDACTED] and [REDACTED] in their affidavits, claimed to know the applicant since 1981, but made no knowledge of the applicant's residence in the United States.
5. [REDACTED] in her affidavit, claimed that the applicant resided with her for several years, but provided no address or made any knowledge of the applicant's residence in the United States.
6. The photograph, submitted on appeal, has no identifying evidence that could be extracted which would serve to either prove or imply that photograph was taken in the United States.
7. The record contains evidence that on March 28, 1988, a Form I-130 was filed on the applicant's behalf. On the applicant's Form G-325A, the applicant claimed employment from March 1985 with three separate employers, none of which correspond with the employment documents submitted with his LIFE application or claimed on his Form I-687 application. On the Form I-130, the petitioner listed the applicant's address in Los Lunas, New Mexico since March 18, 1988. The applicant, however, claimed on his Form I-687 application to have resided in Bell, California from January 1982 to July 1992.

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).

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.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's testimony in a sworn signed statement taken under oath at the time of his interview at the Los Angeles legalization office on April 11, 2003. The applicant indicated that he departed the United States in February 1984 in order to take his mother to Mexico and did not return until October 1984.

The director, in her Notice of Intent to Deny dated September 17, 2004, informed that the applicant that his absence from the United States failed to establish his continuous residence in the United States. The applicant, in response, asserted that he did not remain in Mexico for more than 30 days as he returned to the United States within the same month. The applicant asserted, "I would like to mentioned to the fact that I wrote and signed a sworn statement that I do not consider myself fluent in English, therefore, I did not know what I was signing. Also, I did not have or were allowed to have a translator, and that statement once again is not true."

Item 35 of the Form I-687 application requests the applicant to list all of his absences from the United States since his entry. The applicant indicated the only departure from the United States was during June 1987. On the Form I-130 filed on the applicant's behalf, the petitioner indicated at item 14, that the applicant last arrived in the United States on June 5, 1985. The applicant failure to disclose his February 1984 and his 1985 departures diminish the credibility of his claim to have continuously resided in the United States during the period in question

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). Based on the evidence in this case, the AAO determines 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).

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