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

PUBLIC COPY

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APR 19 2007

FILE:

MSC 01 317 61061

Office: LOS ANGELES

Date:

APR 10 2007

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. 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.

A handwritten signature in dark ink, appearing to be "R. Wiemann", written over a circular stamp.

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 submitted sufficient evidence of residency and submits four third-party declarations as additional evidence.

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).

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 throughout the application process:

- A declaration signed February 10, 2005 from [REDACTED] stating that she met the applicant in 1987 in Wilmington, California through her ex-husband [REDACTED], and the applicant became a friend of the family thereafter.
- A declaration signed February 9, 2005 from [REDACTED] stating that the applicant lived at her home at [REDACTED] in Torrance, California from December 1981 to 1986. [REDACTED] also states that she employed the applicant as a housekeeper from February 1982 to September 1986.
- A declaration signed February 9, 2005 from [REDACTED] stating that he met the applicant in 1984 during pick-up basketball games at a high school in Wilmington, California where [REDACTED] was attending adult education classes. [REDACTED] indicates that he remained friends with the applicant through 1989 when he and the applicant became co-workers at a hospital.
- A declaration signed on February 9, 2005 from [REDACTED] stating that he met the applicant in Wilmington, California in 1985 when they attended the same church. [REDACTED] states that he and the applicant "would meet after mass on Sundays and go out to different kinds of activities . . . [a]t least two to three times a month."
- An affidavit notarized on June 3, 2003 from [REDACTED] stating that he employed the applicant as a gardener from 1982 to 1985.
- An affidavit notarized on May 23, 2003 from [REDACTED] stating that she has known the applicant since 1984 and that the applicant lived at her residence at [REDACTED] in Hawthorne, California in 1986 and 1987.
- An affidavit notarized on May 12, 2003 from [REDACTED] stating that he has personal knowledge that the applicant resided in Wilmington, California from 1983 to that date because they had "kept in touch since then."
- An affidavit notarized on May 9, 2001 from [REDACTED] stating she met the applicant at a family reunion in 1986 and sees him on a weekly basis.
- An affidavit notarized on May 8, 2001 from [REDACTED] stating that he has known the applicant since they attended the same church in Wilmington, California in 1985.
- A letter dated April 25, 2001 from [REDACTED] stating that the applicant claims to have attended the Holy Family Catholic Church since 1984 but to have become a registered member on March 25, 2001.

- An affidavit notarized on April 24, 2001 from [REDACTED] stating that she has personal knowledge that the applicant resided in Torrance, California from December 1981 to that date because they had “kept in touch since then.”
- A letter dated November 18, 1998 from [REDACTED], Regional Operations Manager for Torrance Memorial Medical Center, stating that the applicant worked in the kitchen of the medical center from March 13, 1988 to that date.
- An affidavit notarized on May 30, 1990 from [REDACTED] stating that the applicant worked at Western Video from January 1985 to August 1986.
- An affidavit notarized on May 30, 1990 from [REDACTED] of Torrance, California attesting that the applicant lived at her house and worked for her from February 1982 to September 1986.
- An affidavit notarized on May 29, 1990 from [REDACTED] stating that she took the applicant to the Mexican border on August 7, 1987.
- A letter dated May 25, 1990 from [REDACTED] of the Holy Family Catholic Church stating that he has personal knowledge that the applicant has been a member of the church from May 1984 to that date.
- A letter dated April 27, 1988 from [REDACTED], Director of Personnel at the Harbor Gateway Holiday Inn in Torrance, California stating that the applicant had been working as a cafeteria assistant at the hotel since February 29, 1988.
- A State of California Form 1099G Report of State Income Tax Refund issued to the applicant in 1989 for the year 1988.
- A deposit receipt dated October 23, 1987 from Wells Fargo Bank bearing the name Neri.
- A postal receipt dated September 17, 1987 bearing the applicant’s name and a return address of [REDACTED] in Hawthorne, California.
- A bank statement from Wells Fargo Bank for the applicant residing at [REDACTED] in Hawthorne, California covering the period from August 21, 1987 through September 21, 1987.
- An envelope postmarked in 1987 and addressed to the applicant at [REDACTED] in Hawthorne, California.
- Four envelopes apparently postmarked in Mexico in 1986 and addressed to the applicant at

in Los Angeles, California.

- A W-2 earnings statement from Church's Fried Chicken for [REDACTED] for the year 1986.
- A receipt dated June 10, 1985 bearing the applicant's name.
- A "Sales Order" dated September 30, 1984 bearing the applicant's name and address.
- A receipt dated March 28, 1984 bearing the applicant's name.
- A receipt dated March 15, 1984 from Herwood's Building Supplies bearing the applicant's name.
- A receipt dated 1983 from Western Building Supply in Wilmington, California bearing the applicant's signature.
- A receipt dated 1983 from Avon cosmetics bearing the applicant's name.
- An envelope postmarked November 2, 1982 addressed to [REDACTED] at [REDACTED] [REDACTED] in Torrance, California [REDACTED]
- A receipt, with credit card form dated November 1, 1982 attached, from [REDACTED] cosmetics bearing the applicant's name and signature.
- A student identification card from El Camino College bearing the applicant's name and photograph.

On December 13, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the applicant "[had] not met [his] burden of proof of residence prior to 1986." The director determined that the receipts submitted by the applicant "do not establish residence for the proclaimed years," and the affidavits "do not contain sufficient information of [the applicant's whereabouts] . . . or corroborative documents for the statement made."

In the decision to deny the application dated December 20, 2004, the director noted that the applicant had been granted thirty days to rebut adverse information set forth in the NOID, but the information submitted "failed to overcome the grounds for denial as stated in the NOID."

On appeal, counsel asserts that the director erred in denying the application a mere six days after issuing the NOID. Counsel contends that the applicant has submitted sufficient evidence of residency to meet his burden of proof and notes that the director has not "[challenged] either the credibility of the applicant and the affiants or the authenticity of the documents." Counsel also submits new declarations from four individuals: [REDACTED] and [REDACTED] (formerly [REDACTED])

The AAO concurs with counsel that the director erred in denying the application without giving the applicant the full thirty days to respond to the NOID. Nevertheless, as the applicant has been granted ample opportunity to respond and to submit further evidence on appeal, this procedural error has been remedied and the applicant has not been unduly prejudiced.

After considering all the evidence submitted by the applicant, the AAO finds that the applicant has not submitted evidence that is sufficiently relevant, probative and credible to meet the applicant's burden. In addition to the grounds for denial stated by the director, the evidence submitted by the applicant contains inconsistencies. Even some of the evidence submitted on appeal contains information that is inconsistent with other evidence in the record. Specifically:

- In an affidavit dated May 12, 2003, [REDACTED] stated that he had personal knowledge that the applicant had lived in Wilmington, California since 1983. However, in the declaration submitted on appeal, [REDACTED] attests to having met the applicant in 1984 during pick-up basketball games at a high school in Wilmington, California where the affiant was attending adult education classes, and to having remained friends with the applicant through 1989 when the affiant and the applicant became co-workers at a hospital. On his Form I-687, Application for Status as a Temporary Status, the applicant does not list Wilmington as one of the cities in which he has resided. Neither does the applicant list employment at a hospital on his form I-687, signed in 1990.
- [REDACTED] states in her affidavit that the applicant began working at the Holiday Inn in February 1988, but the applicant does not list this employment on his Form I-687.
- In the declaration submitted on appeal, [REDACTED] states that she met the applicant in 1987 in Wilmington, California through her ex-husband [REDACTED] which contradicts the statement in her 2001 affidavit that she met the applicant in 1986.
- Most of the receipts submitted by the applicant do not include the name or contact information for the person or entity issuing the receipt (some also lack an exact date of issuance), and are thus not amenable to verification.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The applicant has submitted inconsistent evidence of residency. It is reasonable to expect him to resolve the contradictions through explanations from the affiants providing contradicting testimony and through

other credible evidence. The applicant has failed to present sufficient credible evidence of residency to adequately address the discrepancies noted herein. The evidence submitted by the applicant on appeal contains information that is inconsistent with evidence already in the record. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

Finally, according to an FBI report based on the applicant's fingerprints, the applicant was arrested and charged with one count of driving under the influence of drugs/alcohol by the Los Angeles Police Department on April 4, 2005. The final disposition of these charges is unknown.

Given the contradictions and insufficiencies in the evidence, 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 since that time 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.