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U.S. Citizenship
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Services

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FILE:



MSC 02 217 60410

Office: LOS ANGELES

Date:

MAR 16 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. 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 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 applicant has resided in the United State since prior to January 1, 1982, and that there is no evidence to the contrary. Counsel states that, therefore, pursuant to *Phinpathaya v. Ins.*, 673 F.2d 1013 (9th Cir. 1981), which is still “good law in the 9th Circuit,” in “the absence of testimony verbatim or testimony given to a tribunal, the alien cannot be considered not to be credible.”

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 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 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).

The applicant has given various dates for his first entry into the United States. In an August 10, 1999 sworn declaration, the applicant stated that he entered the United States without inspection in September 1981. In his March 31, 2004 LIFE Act adjustment interview, however, the applicant stated that he first came to the United States in 1980, and “decided to stay in the U.S.” The applicant stated that had he small odd jobs for cash from 1980 to 1981 and that he and his wife lived with the [REDACTED] family. In a

January 14, 2005 statement, the applicant again stated that he entered the United States in 1981, after having been denied a humanitarian visa from the United States in 1980 to get treatment for his son, who was suffering from muscular dystrophy. While all of these dates are within the qualifying period, the applicant's inconsistent statements raise issues as to his credibility. 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).

The applicant stated on his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on November 20, 1989, that he lived at the following locations during the qualifying period:

September 1981 to December 1983
January 1984 to June 1984
August 1984 to August 1986
August 1986 to August 1987
August 1987 to April 1988
April 1988 to June 1989



The applicant also stated that he worked for Erin Furniture Company in Venice, California from July 1981 to June 1984, and at Izhak's Custom Homes in Venice from 1985 through the date of his Form I-687 application.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A September 3, 1989 letter from [REDACTED], president of Erin Furniture Company in Venice, California, in which he stated that the applicant worked for Erin Furniture Co., from July 1981 to June 1984.
2. An undated "affidavit" from [REDACTED], in which he stated, that to his personal knowledge, the applicant had lived in Venice, California since July 1981. [REDACTED] stated that he met the applicant when the applicant started to work for Erin Furniture. [REDACTED] provided a January 8, 2005 letter in which he stated that the applicant worked as a part-time installer from about August 1981 to November 1982, when he was promoted and worked under [REDACTED]'s orders for two more years.
3. A September 26, 1989 affidavit from [REDACTED] in which he stated that, to his personal knowledge, the applicant had lived in Los Angeles since November 1981. The affiant stated that he worked with the applicant "at other shop and still work together in the actual shop." The affiant did not state at which shops he worked with the applicant and the dates that they began working together. In a June 20, 2004 statement, however, [REDACTED] stated that he met the applicant in March 1981 when they worked for Erin Furniture and later for [REDACTED].
4. A copy of the applicant's daughter's State of California immunization record with entries beginning on September 14, 1983.

5. A September 26, 1989 affidavit from [REDACTED] in which he stated that, to his personal knowledge, the applicant had lived in Los Angeles since December 1983, and that they met at a Christmas party. This information appears to conflict with that provided by [REDACTED] in a June 20, 2004 letter in which he stated that he met the applicant in December 1980 and hired him on a per contract basis until June 1981. *Matter of Ho*, 19 I&N Dec. at 591.
6. A September 26, 1989 affidavit from [REDACTED] in which she stated that to her personal knowledge, the applicant had lived in Venice, California from March 1984. The affiant did not state the basis of her knowledge of the applicant's residency, but stated that she recommend him for his job at Izhak's.
7. A May 21, 1989 statement from Izhak's Custom Homes verifying the applicant's employment, and stating that he had been employed for the company for three years. This conflicts with an August 17, 1989 letter from the company signed by [REDACTED] in which he stated that the applicant had worked for the company for the past four years. *Matter of Ho*, 19 I&N Dec. at 591. In a July 6, 2004 letter, [REDACTED] stated that the applicant worked for him over seven years, from June 1984 to approximately May 1990. The letter does not indicate the source relied upon in providing this information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted a copy of a 1988 Form 1099-MISC, Miscellaneous Income, issued to the applicant by Izhak's Custom Homes; however, he submitted no other documentation to confirm his work with the company prior to that date.
8. Partial copies of Forms 1040 and 1040A, U.S. Individual Income Tax Returns, for 1987 and 1988. These documents do not contain a signature page and there is no indication that the tax returns were filed with the Internal Revenue Service. The applicant also submitted a copy of a 1987 Form 540A, California Short Tax Form. However, there is no indication that this form was filed with the State of California.
9. A one-month apartment lease for [REDACTED] in Los Angeles dated April 6, 1988.

The applicant also provided inconsistent information regarding his absences from the United States during the qualifying period. According to his Form I-687 application, the applicant was absent from the United States only once during the qualifying period, from November 23 to December 21, 1987, because his son was ill. In an October 23, 1989 declaration for class membership, which he also signed under penalty of perjury, the applicant stated that he left the United States from September 23 to October 26, 1987 because of the illness of his son, and repeated this in his August 10, 1999 sworn statement. The record contains copies of the applicant's passports issued in Mexico on June 4, 1985 and August 19, 1987. The passports reflect that the applicant received a Mexican Border Crossing Identification Card and B-1/B-2 Nonimmigrant Visa by the Consulate General of the United States in Tijuana, Mexico, and reflect entrances into the United States on June 26, 1985, October 26, 1987, and August 22, 1988.

In response to the director's Notice of Intent to Deny (NOID) dated December 20, 2004, noting these inconsistencies, the applicant submitted a statement in which he stated that his statement on his Form I-687 was a guess as to the date that he was absent from the United States. The applicant also stated that his entries in October 1987 and August 1988 were in response to his need to visit his family that was left in Mexico.

The applicant's statement, without more, does not constitute the independent objective evidence necessary to resolve the inconsistencies in the record. We note that the applicant initially stated that the purpose of

his visit to Mexico was because of his son's illness. However, in his January 14, 2005 statement submitted in response to the NOID, the applicant stated that his initial illegal entry into the United States was for the purpose of getting medical treatment for his son, and that the family had never been separated.

Counsel is therefore in error when she states that there are no inconsistencies in the evidence provided by the applicant. Given these unresolved inconsistencies, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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