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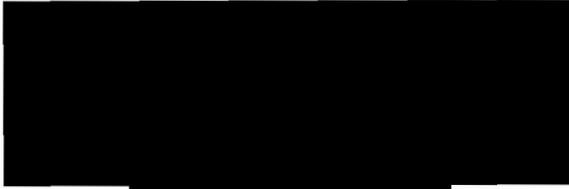
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 02 217 60122

Office: Phoenix

Date: MAY 25 2007

IN RE: Applicant: [REDACTED]

PETITION: 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.

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, Phoenix, Arizona, 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 established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant contends that Citizenship and Immigration Services, or CIS (successor to the Immigration and Naturalization Service, or the Service) erred in denying the application because he had submitted sufficient evidence in support of his claim of residence in the United States for the requisite period.

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. *See* § 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. *See* 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on January 2, 1990. The applicant included a separate affidavit in which he claimed that he first entered the United States with a visa in New York in June 1981 and that he continuously resided in this country since date with the exception of a ten-day absence when he traveled to France from December 10, 1987 to December 20, 1987. However, the applicant failed to provide any independent evidence in support of his claim of continuous residence in the United States since prior to January 1, 1982

Subsequently, on May 5, 2002, the applicant filed his Form I-485 LIFE Act application. The applicant included another separate affidavit in which he reiterated his claim that he first entered the United States with a visa in New York in June 1981 and that his period of authorized stay expired prior to January 1, 1982. The applicant asserted that continuously resided in this country since June of 1981 with the exception of a ten-day trip to France from December 10, 1987 to December 20, 1987. The applicant contended that documentation demonstrating that he resided in this country during the requisite period was destroyed in a fire that occurred in the apartment building where he lived at [REDACTED] in New York, New York on December 8, 1990. However, the applicant failed to provide evidence such as a passport stamp, photocopies of passport pages, or a Form I-94, Arrival/Departure Record, to corroborate his claim that he first entered the United States with a visa in New York in June 1981 and that his period of authorized stay expired prior to January 1, 1982. Although the applicant provided a photocopied report from the Fire Department of New York City reflecting that an extensive fire involving fatalities and injuries occurred at this address on this date, the record contains no evidence demonstrating that the applicant incurred any property damage or loss as a result of this fire or that he even resided at this address on the date in question.

The applicant provided an affidavit that is signed by [REDACTED] stated that he known the applicant since 1982 and that they had subsequently remained friends. [REDACTED] declared that the applicant lost valuables and documents in a fire that occurred in his apartment building in New York City in December of 1991. However, the record shows that the fire that purportedly destroyed the applicant's documentation took place on December 8, 1990 and not December 1991. Further, [REDACTED] failed to provide any specific and verifiable information, such as the applicant's address(es) of residence in this country that would tend to corroborate the applicant's claim of residence in the United States from 1982 to May 4, 1988. Moreover, [REDACTED] failed to testify that the applicant resided in this country prior to January 1, 1982.

The applicant included an affidavit signed by [REDACTED] who noted that he had known the applicant since 1984 when they met in New York. [REDACTED] claimed that he and the applicant were

roommates on several occasions in New York and Arizona. ██████████ stated that the applicant lost all of his valuables and documents in a fire at his apartment building in New York City in 1991. However, ██████████'s testimony regarding the fire that purportedly destroyed the applicant's documentation must be considered as questionable at best as such fire took place on December 8, 1990 rather than 1991. Additionally, ██████████ failed to provide any relevant and verifiable information, such as the applicant's address(es) of residence in this country during the requisite period despite the fact he that claimed to have known the applicant since 1984 and been his roommate on occasion.

The applicant submitted a photocopy of an envelope that purportedly mailed to him at the address of an employer for whom he claimed to have worked in New York, New York from 1982 to 1985. However, the photocopy of this postmarked envelope does not contain a legible postmark and, therefore cannot be considered as probative to the applicant's claim of continuous residence in the United States since prior to January 1, 1982.

The record shows that the applicant appeared for an interview relating to his Form I-485 LIFE Act application at CIS' District Office in Phoenix, Arizona on February 4, 2003. During his interview, the applicant provided a sworn statement in which he admitted that he had been arrested for possession of marijuana and cocaine in Astoria, New York in 1994 and driving under the influence in Scottsdale, Arizona in 2000. The applicant acknowledged that he was found guilty and sentenced to six or seven days of community service for the drug charge and also found guilty of driving under the influence and sentenced to ten days in jail.

An applicant for permanent resident status under the provisions of LIFE Act must establish that he or she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Act. Section 1140(c)(2)(D)(i) of the LIFE ACT.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act.

A waiver of grounds of inadmissibility is not available to an alien found to be inadmissible under specifically enumerated grounds of section 212(a) of the Act including section 212(a)(2)(A)(i)(II) of the Act. Section 245A(d)(2)(B)(ii) of the Act, 8 C.F.R. § 245a.2(k)(3)(ii), and 8 C.F.R. § 245a.18(c)(2)(ii).

The sole exception allowing for the waiver of the ground of inadmissibility for an alien found inadmissible under Section 212(a)(2)(A)(i)(II) of the Act as a result of a conviction involving a controlled substance is that available to an alien convicted of "...a single offense of simple possession of 30 grams or less of marijuana...." Section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 245a.2(k)(3)(ii), and 8 C.F.R. § 245a.18(c)(2)(ii).

An alien who has been convicted of a felony or of three or misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. *See* section 1140(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

In the notice of intent to deny issued on February 24, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director concluded that the two affidavits submitted by the applicant were not sufficient evidence of his residence in this country for the requisite period. In addition, the district director determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Act because he had been convicted of a crime involving marijuana and cocaine. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted court documents that reflect the following regarding the applicant's criminal history:

- An arrest on September 24, 1994 by the New York City Police Department (NYSID Number [REDACTED]) for a violation of section 220.09 of the New York Penal Code, Criminal possession of a controlled substance in the fourth degree, a class C felony and a separate violation of section 220.03 of the New York Penal Code, Criminal possession of controlled substance in the seventh degree, a class A misdemeanor. The case was assigned docket number [REDACTED] and the applicant subsequently pleaded guilty to violating section 240.20, Disorderly conduct, a violation in the Criminal Court of the City of New York County of Queens on October 13, 1994.
- An arrest on June 15, 2000 by the Scottsdale, Arizona Police Department (Complaint number [REDACTED]) for a violation of section 1381(A)(1) of chapter 28 of the Arizona Revised Statutes, Driving under the influence of an intoxicating liquor, drug, and or vapor, a class 1 misdemeanor, a separate violation of section 1381(A)(2) of chapter 28 of the Arizona

Revised Statutes, Driving with a blood alcohol count of 0.10 or higher, a class 1 misdemeanor, a separate violation of section 1382(A) of chapter 28 of the Arizona Revised Statutes, Extreme driving under the influence with a blood alcohol count of 0.18 or higher, a class 1 misdemeanor, and a separate violation of section 729.1 of chapter 28 of the Arizona Revised Statutes, Unsafe lane change, a violation. The case was assigned case number [REDACTED] and the applicant subsequently pleaded guilty to violating section 1382(A) of chapter 28 of the Arizona Revised Statutes, Extreme driving under the influence with a blood alcohol count of 0.18 or higher, a class 1 misdemeanor in Scottsdale City Court, Maricopa County, State of Arizona on September 22, 2000.

As the record establishes that the applicant had only been convicted of only one misdemeanor and such conviction did not involve a controlled substance, he cannot be considered as inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Nor can the applicant be considered ineligible under section 1140(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1) as a result of his single misdemeanor conviction.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status for the entire period from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on March 16, 2005.

On appeal, the applicant reiterates his claim that all his evidence of residence in the United States for the requisite period was destroyed in a fire. The applicant contends that it is a heavy burden to obtain evidence relating to events that occurred some twenty years ago. As discussed previously, although the applicant provided a photocopied report from the Fire Department of New York City reflecting that an extensive fire involving fatalities and injuries occurred at particular location on December 8, 1990, the record contains no evidence demonstrating that the applicant incurred any property damage or loss as a result of this fire or that he even resided at the same address on the date in question. While an applicant may very well experience difficulties in obtaining evidence of residence in this country for the requisite period after such a considerable passage of time, it is the same burden of proof imposed by 8 C.F.R. § 245a.12(e) upon any and all applicants for permanent residence under the provisions of the LIFE Act.

The absence of sufficiently detailed supporting documentation relating to the applicant's residence in this country seriously undermines the credibility of the applicant's claim of residence in the United States from prior to January 1, 1982. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-M-*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the entire period from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of

the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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