

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

MSC 03 186 61990

Office: LOS ANGELES

Date:

APR 11 2008

IN RE: Applicant:

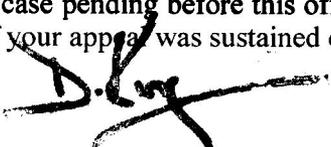
APPLICATION:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant attempts to reconcile a discrepancy in the record noted by the director. The applicant maintains that his only absence from the United States was on May 7, 1987. The applicant asserts that his daughter, born on July 11, 1986, is not his biological daughter. The applicant states that he is willing to submit to a DNA test to prove his paternity. The applicant contends that he meets all of the requirements under the LIFE Act.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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).

In the Notice of Intent to Deny (NOID), dated on January 28, 2006, the director stated that record contained several inconsistencies between the applicant's testimony, applications and documents, which detract from the credibility of the entire file and its contents. The director granted the applicant thirty (30) days to submit additional evidence. In a rebuttal to the NOID, dated February 16, 2006, applicant attempts to reconcile the inconsistencies. In the Notice of Decision, dated March 18, 2006, the director stated that information submitted failed to overcome the grounds for denial as stated in the NOID. The director denied the instant applicant.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant's claim, the record includes the following relevant evidence:

1. A sworn affidavit, dated January 16, 2006, by [REDACTED]. Mr. [REDACTED] stated that the applicant resided with him at [REDACTED] in Chicago, Illinois, from January 1, 1981 through December 30, 1986. The affiant provided his address of residence, telephone number, and Illinois identification card. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period or to corroborate the affiant's claim, such as rent receipts, lease agreement, household bills, etc. The lack of detailed documentation detracts from the credibility of the affiant.
2. A sworn affidavit, dated January 16, 2006, by [REDACTED]. Mr. [REDACTED] stated that the applicant resided at [REDACTED] in Chicago, Illinois, from January 1, 1987 through December 30, 1987. The affiant provided his address of residence, telephone number, and Illinois identification card. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period or to corroborate the affiant's claim, such as rent receipts, lease agreement, household bills, etc. The lack of detailed documentation detracts from the credibility of the affiant.
3. A sworn affidavit, dated March 12, 1990, by [REDACTED], who stated that she notarized a copy of an original New Clark and Morse Currency Exchange card found in their records. The affiant stated that the applicant has been on file since 1983. A

copy of card is provided on the affidavit. The September 3, 1983, card contains the applicant's name, indicates that the applicant resided at [REDACTED] and states the applicant was employed by Lee's Gallery Rest. While the affidavit may place the applicant in the United States on September 3, 1983, it is insufficient to establish his continuous residence in the United States throughout the duration of the statutory period. It is also noted that the evidence contains a discrepancy which will be addressed later in the decision.

4. A copy of a Western Union money order receipt dated May 26, 1987. The receipt contains the applicant's name and address at [REDACTED] Chicago, Illinois. While the receipt places the applicant in the United States on May 26, 1987, it does not establish the applicant's continuous unlawful residence in the United States throughout the duration of the statutory period.
5. A copy of the applicant's Statement of Earnings and Deductions from La Canasta Restaurant, Inc., dated January 25, 1988 to February 7, 1988. While this statement places the applicant in the United States for one month in 1988, it does not indicate the initial date of employment. Also, the record does not contain an employment letter from the restaurant. The lack of sufficient details fails to establish the applicant's continuous unlawful residence in the United States throughout the duration of the statutory period.

Although the applicant has submitted several pieces of evidence in support of his application, the applicant has not provided sufficient evidence of entry into the United States before January 1, 1982. While two affidavits support the applicant's presence in the United States prior to January 1, 1982, the affidavits lack sufficient detailed information to corroborate the applicant's claim. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they met the applicant. In addition, the applicant has not provided sufficient contemporaneous evidence of continuous unlawful residence throughout the duration of the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

The AAO also notes that the director revealed three inconsistencies in the record. The applicant has failed to reconcile these discrepancies. First, the record contains a sworn affidavit by [REDACTED], dated April 2, 1990. [REDACTED] stated that he has personal knowledge that the applicant resided in Anaheim, California, from November 1981 to the present. The record also contains a Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, signed by the applicant. In his Form I-687, at Question #33, the applicant stated that he resided in Chicago, Illinois, from January 1981 to 1987. The applicant stated he lived in Illinois; whereas [REDACTED] stated California. This discrepancy casts doubt on the credibility of the affiant.

Second, in the his Form I-687, the applicant stated that his only absence from the United States was a visit to Mexico from May 7, 1987, to May 29, 1987. However, the director questioned the applicant's claim as the applicant had a daughter, [REDACTED] born in Mexico on July 11, 1986. The applicant submitted a notarized declaration b [REDACTED], mother of [REDACTED] [REDACTED] dated February 11, 2006. [REDACTED] stated that the applicant was not the biological father of her daughter.

Third, the record reflects that the applicant was interviewed on November 30, 1994. During the applicant's interview, he stated that he first entered the United States in January 1982. Pursuant to Section 1104(c)(2)(B) of the LIFE Act, the applicant must establish that he entered the United States before January 1, 1982. The applicant attempted to explain that his interview statement as an error due to nervousness. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

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). With the exception of [REDACTED]'s declaration, the record contains no independent objective evidence to explain the above inconsistencies.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after provided an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

Beyond the decision of the director, it is also noted that the affidavit by [REDACTED] contains another discrepancy. The copy of the New Clark and Morse Currency Exchange card indicates that the applicant's resided at [REDACTED]. In the applicant's Form I-687, the applicant never indicated that he resided at this address. The card also indicates that the applicant was employed at Lee's Gallery Rest. In his Form I-687, the applicant never indicated employment at this company. These discrepancies raise further concerns about the veracity of the applicant's claim.

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. Given the applicant's reliance upon documents with numerous discrepancies, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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