

**PUBLIC COPY**  
**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



U.S. Citizenship  
and Immigration  
Services

L2

FILE:

MSC 03 154 61572

Office: Los Angeles

Date: APR 28 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, 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 filed a Form I-589 Request for Asylum in the United States, to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services of CIS) on February 1, 1996, in which the applicant provided testimony that directly contradicted his claim of residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988. The district director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, the applicant reaffirmed his claim of continuous residence in the United States for the requisite period. The applicant objected to the district director's finding that he had previously filed a Form I-589 containing testimony that contradicted his claim of residence because he asserted that he had never filed a Form I-589 asylum application. The applicant included copies of previously submitted documents with his appeal.<sup>1</sup>

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 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. 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

---

<sup>1</sup> Subsequent to the filing of the applicant's appeal, a Form G-28, Notice of Entry of Appearance as Attorney or Representative, was submitted by attorney Rufino Marc Cardoso. A review of the website at <http://members.calbar.ca.gov> reveals that Mr. Cardoso is a member of the California Bar, but that his current status is inactive.

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.

The issue to be determined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 Act on or about October 30, 1991. On the Form I-687 application, the applicant claimed that he first entered and began his continuous residence in this country in October of 1981. Further, at parts #12 and #13 of the Form I-687 application, the applicant listed his country of birth and country of citizenship as Mexico. In addition, at parts #20 and #21 of the Form I-687 application the applicant listed his mother’s name as [REDACTED] and his father’s name as [REDACTED]. In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant provided two affidavits.

The record shows that the applicant subsequently submitted a Form I-485 LIFE Act application on March 3, 2003. As evidence of his identity, the applicant included a photocopy of a Mexican birth certificate that was issued on March 5, 1985, and is accompanied by a certified English translation. This birth certificate listed the applicant’s name as [REDACTED], his date of birth as June 18, 1961, the name of his mother as [REDACTED], and the name of his father as [REDACTED]. With the Form I-485 LIFE Act application, the applicant also provided a photocopy of a State of California Department of Motor Vehicle Identification Card. This identification card was issued on January 11, 1989 and listed the applicant’s name as [REDACTED], his date of birth as June 18, 1961, and his identification number as [REDACTED]. The applicant also provided copies of previously submitted documentation as well as three new affidavits, a check cashing card, and eleven photocopied receipts for registered mail in support of his claim of residence in this country since prior to January 1, 1982.

A review of the record revealed that the applicant possessed a separate Administrative file or A-file, [REDACTED], that contained a Form I-589 asylum application which had been submitted to the Service on February 1, 1996. The record reflects that the applicant's Form I-589 asylum application and supporting documents have been consolidated into the current record of proceedings. On the Form I-589 asylum application, the applicant listed his name as [REDACTED], his date of birth as June 18, 1961, country of birth as El Salvador, and nationality as Salvadorean. The applicant indicated that he lived in El Salvador prior to entering the United States by crossing the border at San Ysidro, California without being inspected by a Service officer in May 1990. The applicant specifically testified that he had been forcibly recruited into and then deserted the Salvadorean military in 1989 and then deserted in 1990. In addition, the applicant listed his mother's name as [REDACTED], father's name as [REDACTED] and both parent's nationality as Salvadorean. As evidence of his identity, the applicant provided a photocopy of a State of California Department of Motor Vehicle Identification Card with the Form I-589 asylum application. This identification card was issued on October 30, 1993 and listed the applicant's name as [REDACTED], date of birth as June 18, 1961, and identification number as [REDACTED].

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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).

On September 6, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director determined that the applicant had testified that he was a Salvadorean national who had resided in El Salvador during the requisite period on the Form I-589 asylum application thereby contradicting his claim of continuous residence in the United States since prior to January 1, 1982. The applicant was granted thirty days to respond to the notice.

The applicant submitted a statement in which reaffirmed his claim of continuous residence in the United States since October 1981. The applicant claimed that he had never filed the Form I-589 asylum application cited by the district director in the notice of intent to deny. The applicant included copies of previously submitted documentation with his statement.

The district director determined that the applicant failed to submit sufficient evidence to overcome the derogatory information contained in the notice of intent to deny and, therefore, denied the Form I-485 LIFE Act application on October 11, 2006.

On appeal, the applicant reaffirmed his claim of continuous residence in the United States for the requisite period. The applicant objected to the district director's finding that he had previously

filed a Form I-589 containing testimony that contradicted his claim of residence because he asserted that he had never filed a Form I-589 asylum application.

However, a review of the record on appeal revealed that the district director had failed to cite any specific evidence to demonstrate that the applicant was the same individual who had previously filed the Form I-589 asylum application. Consequently, the AAO issued a notice to the applicant on January 30, 2008 informing the applicant that it was the AAO's intent to dismiss his appeal. Specifically, the applicant was informed of the fact that government issued identification cards bearing the applicant's name, date of birth, and identification number, A5449989, had been submitted with both the Form I-589 asylum application and Form I-485 LIFE Act application and clearly established that the applicant was the same individual who submitted both applications. The applicant was also informed that he had seriously undermined his credibility by submitting two different applications containing contradictory testimony relating to such essential elements as his country of birth, his country of citizenship, names of his parents, and places of residence during the requisite period. By engaging in such an action, the applicant negated the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988. Further, the applicant was informed that he had engaged in fraud and willful misrepresentation of material facts in providing such contradictory testimony. The applicant was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, counsel submitted a request for an extension to reply to the notice. The record shows that the applicant and counsel were granted an extension to March 19, 2008 to submit a response to the notice. However, as of the date of this decision neither the applicant nor counsel has submitted a statement, brief, or evidence addressing the adverse information relating to the applicant's claim of residence in the United States since prior to January 1, 1982.

The fact that the applicant himself provided conflicting and contradictory testimony in his Form I-589 asylum application seriously undermined the credibility of both his claim of residence for the period in question and the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he 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 contradictory nature of the applicant's own testimony relating to his place of residence during the requisite period, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he

willfully misrepresented a material fact, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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