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**U.S. Citizenship
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FILE:



Office: LOS ANGELES

Date:

AUG 27 2008

AAO 07 154 50016

IN RE:

Applicant:



APPLICATION:

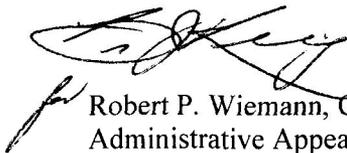
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 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.


for 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 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, the applicant's representative asserts that the affidavits submitted meet the regulatory requirements and should be given full evidentiary weight.

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. Section 1104(c)(2)(B)(i) 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 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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

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

- An affidavit notarized June 9, 1993, from a cousin, [REDACTED] of Los Angeles, California, who attested to the applicant's Los Angeles residence from March 1982 to December 1985. The affiant indicated the applicant resided in his home during this period and that he supported the applicant in all expenses.
- An additional affidavit notarized May 24, 2003, from [REDACTED] who indicated that the applicant resided with him in Los Angeles, California from March 1981 to September 1995.
- An affidavit notarized June 9, 1993, from [REDACTED] who attested to the applicant's employment as a full-time gardener from January 1986 to November 1989.
- An additional affidavit notarized May 27, 2003 from [REDACTED] of Los Angeles, who attested to the applicant's Los Angeles residence from 1981 to 1995. The affiant indicated that the applicant was in his employ from 1981 to 1990.
- A notarized affidavit from [REDACTED] of Los Angeles, California, who attested to the applicant's absence from the United States from December 15, 1987 to January 10, 1988.

On October 3, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient information and were unaccompanied by corroborative documents.

The applicant, in response, reaffirmed his employment with [REDACTED] and submitted:

- A letter dated October 29, 2006, from [REDACTED] of Los Angeles, California, who indicated that he first met the applicant 20 years ago doing odd jobs at Winchell Donut Shop. The affiant asserted that he has remained friends with the applicant as the applicant married his sister-in-law.
- A letter dated October 29, 2006, from [REDACTED] of Los Angeles, California, who indicated that the applicant has been employed as her gardener for several years.

On appeal, the applicant's representative asserts that the affidavits clearly document the applicant's entry into the United States prior to January 1, 1982 and his continuous residence since that date through "November 31, 2006."¹

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with

¹ The month of November has 30 days.

the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant and the representative have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented inconsistent and contradictory documents, which undermines his credibility. Specifically:

1. [REDACTED] attested to the applicant's employment for "several years," but failed to include the exact employment dates and the applicant's address at the time of employment as **required** under 8 C.F.R. § 245a.2(d)(3)(i). The affidavit, therefore, lacks evidentiary weight.
2. [REDACTED] attested to the applicant's residence for over 20 years, but failed to state the applicant's place of residence during the requisite period. The affidavit, therefore, lacks evidentiary weight.
3. In his initial affidavit [REDACTED] indicated that the applicant resided with him from March 1982 to December 1985. However, in his subsequent affidavit, [REDACTED] amended his affidavit to reflect that the applicant had resided with him from 1981 through May 4, 1988.
4. In his initial affidavit, [REDACTED] indicated that the applicant was in his employ from January 1986 to November 1989. However, in his subsequent affidavit, [REDACTED] amended his affidavit to reflect that the applicant was in his employ from 1981 through May 4, 1988.

As conflicting statements have been provided, it is reasonable to expect an explanation from each affiant in order to resolve the contradictions. However, no statement from either affiant has been submitted to resolve their contradicting affidavits. As such, the affidavits from [REDACTED] and [REDACTED] have little probative value or evidentiary weight.

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

Given the credibility issues arising from two of the affidavits and the lack of probative value and evidentiary weight in all the documentation provided by the applicant, it is determined 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 from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, it is noted for the record that on April 17, 1993, the applicant was detained by the Los Angeles Police Department for violating section 246.3 PC, discharge of a firearm in public. On April 20, 2003, the applicant was released as prosecution was declined due to lack of sufficient evidence. Booking No. [REDACTED]

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