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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: PHOENIX

Date:

JUN 24 2008

MSC 02 232 66848

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. The file has been returned to the National Benefits Center. 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988. The director also noted that due to discrepancies regarding the applicant's dates of entry into the United States, it appeared that the applicant had willfully misrepresented a material fact in violation of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act).

On appeal, counsel states that the applicant has submitted substantial documentary evidence to meet his burden of proof and has established his eligibility for permanent resident status under the LIFE Act. Counsel also contends that the applicant did not willfully misrepresent a material fact as contended by the director. Counsel submits a brief on appeal outlining these assertions.

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).

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).

In the affidavit for class membership, which he signed under penalty of perjury on April 20, 1990, the applicant stated that he first arrived in the United States in October 1981 when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on April 20, 1990, the applicant claimed to live at the following addresses during the requisite period:

October 1981 to June 1986:  
June 1986 to Present:



Regarding his employment history, the applicant claimed on the same form that he was employed by the following employers during the relevant period:

November 1981 to September 1986:  
September 1986 to Present:

7-11 Food Store, Redondo Beach  
7-11 Food Store, Rancho Palos Verde

On both forms, the applicant claimed that he departed the United States once during the requisite period for a trip to Syria in February 1988.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Handwritten statement by the applicant, dated May 10, 2002, in which he claims, "I was not outside the United States since my arrival before January 1, 1982, through May 4, 1988."
- (2) Undated declaration of cohabitation by [REDACTED] claiming that he resided with the applicant at [REDACTED] Lawndale, CA 90260 from October 1981 to June 1986.
- (3) Applicant's social security statement dated October 26, 1999, evidencing that the applicant's earnings record began in 1985 and that he consistently earned income from 1985 to 1998.
- (4) Check dated May 26, 1987 from the State of California, Tax Relief and Refund Account, payable to the applicant in the amount of 137.00.
- (5) Check dated June 19, 1987 from the United States Treasury, payable to the applicant in the amount of \$171.05.
- (6) Copy of Form W-2, Wage and Tax Statement for 1988, showing that the applicant earned \$9,486.02 from 7-Eleven in Palos Verde.
- (7) Letter dated August 3, 1989 from the Internal Revenue Service to the applicant, stating that he was owed a refund for the tax period ending 12/31/87.
- (8) Typed statement by the applicant dated May 4, 2004, in which he claims that contrary to previous statements, he did in fact enter the United States with a student visa in 1985. He claims that he was told by the "man who filed the papers for him" that it was unnecessary to disclose his second entry to the United States with the F-1 visa, and therefore this is the reason he did not provide this information when questioned previously.
- (9) Employment verification statement dated April 20, 1990, executed by [REDACTED] General Manager of 7-Eleven/[REDACTED] in Rancho Palos Verdes, claiming that the applicant was employed by the company from November 1981 to the present as a cashier.
- (10) Corroborative affidavit dated April 20, 1990 by [REDACTED], claiming that he has known the applicant since 1981 and knows that he traveled to Syria in February 1988. No additional information is provided.

On April 7, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that he continually resided in the United States since before January 1, 1982, evidence existed in the record to suggest that he did not enter the United States until 1985. The director afforded the applicant the opportunity to rebut this derogatory information and submit any additional

evidence in support of the application. No response was received, and the application was denied on July 11, 2006.<sup>1</sup>

The first issue on appeal is whether the applicant has demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b).

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.

The record contains conflicting evidence with regard to the applicant's claimed residence in the United States since October 1981. On his class affidavit, the applicant claims that he first entered the United States without inspection in October 1981, and did not depart the United States until February 1988 when he traveled to Syria. In a statement dated May 10, 2002, the applicant claims that he was not outside the United States since his arrival before January 1, 1982, through May 4, 1988, thereby conflicting the statement on his class affidavit where he claims he traveled to Syria in February 1988.

More importantly are the glaring contradictions evidenced in other documents and testimony. The record contains a Form I-485 previously executed by the applicant on March 5, 1986. On this form, which he signed indicating the content was true and correct to the best of his knowledge, the applicant claims that he arrived in the United States on April 12, 1985 with an F-1 student visa. This claim directly contradicts the May 10, 2002 statement contained in the record and discussed above. In addition, during his interview with CIS on October 13, 2003, the applicant again stated to the interviewing officer, while placed under oath, that he never departed the United States since his arrival in October 1981. Again, this statement contradicts the claim set forth on the previously-filed Form I-485, as well as the claim on both his class affidavit and his Form I-687 in which he claims that he traveled to Syria in February of 1988. More importantly, this statement is directly contradicted by the applicant's statement dated May 4, 2004, where the applicant acknowledges that he did in fact enter the United States in 1985 with a student visa.

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<sup>1</sup> It should be noted that the original denial in this matter was issued on March 27, 2006. The denial notice failed to advise the applicant of his appeal rights. In response to a subsequent motion by counsel requesting reconsideration, an amended denial notice was issued on July 11, 2006.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel contends that the applicant did in fact enter the United States in 1985 with a student visa, but also contends that he entered the United States in October 1981 without inspection. Counsel argues on appeal that the applicant did not willfully misrepresent a material fact with regard to the 1985 entry, yet provides no evidence to overcome this conclusion. The record clearly contains various statements of the applicant which provide different information under oath. Moreover, an acknowledgement that the applicant in fact chose not to tell the truth with regard to the 1985 entry is contained in his May 4, 2004 statement. Therefore, the assertions of counsel on appeal are not persuasive.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Based on the record of proceeding, it is clear that the applicant willfully misrepresented the extent of his stay in the United States as well as the nature and duration of his exits and entries, thereby rendering him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and relying on statements the applicant knows are not true, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. The applicant did not file Form I-690, Application for Waiver of Grounds of Excludability. Therefore, the applicant is inadmissible to the United States as required by 8 C.F.R. § 245a.2(d)(5).

Notwithstanding this issue, the applicant is likewise ineligible for permanent resident status due to his failure to submit sufficient evidence in support of the application. As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

The AAO acknowledges that evidence exists to establish that the applicant was present in the United States during 1985, 1986, 1987 and 1988. His social security statement shows wages earned in these years, and a Form W-2 from 1988 in addition to copies of tax refund checks issued in 1987 support this conclusion. However, these documents alone do not establish that the applicant was *continuously* residing or continually present in the United States during the required periods. A few errors or minor discrepancies are not reason to question the credibility of an alien 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 CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. As stated above, the applicant clearly misrepresented the dates of his presence in the United States with regard to his entry in 1985, thereby casting doubt on the remaining claims and evidence in the

record pertaining to the period after 1985. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible.

Finally, it is noted that numerous affidavits are submitted in support of the applicant's entry into the United States prior to January 1, 1982 and his continuous unlawful residence therein.

Although the applicant claims he entered the United States in October 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided a number of affidavits in support of his presence in the United States in 1981. The affidavits, however, do not meet the minimum evidentiary standards expected in this matter.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The AAO notes that three of the affidavits submitted are from [REDACTED]. Mr. [REDACTED] claims that he resided with the applicant, he employed the applicant, and he has personal knowledge of the applicant's visit to Syria in February 1988. It is suspect that this one person serves as the main reference for the applicant in this matter. Moreover, as outlined above, these affidavits do not meet the guidelines, for they provide the most basic information and are severely lacking in detail regarding the nature of the affiant's relationship with the applicant.

As stated above, the inference to be drawn from the documentation provided shall depend in part on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The above negative factors would not necessarily defeat the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant set forth the basis of his knowledge for the testimony provided.

Given the absence of corroborating documentation to support the weak evidence in the record, including affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, or that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988. Therefore, the applicant 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.