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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

OCT 08 2008

MSC 04 114 62066

[REDACTED]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

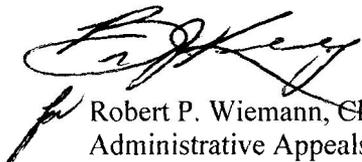
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

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.


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 Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, counsel argues that the director's decision is in error because a response to the Notice of Intent to Deny was timely submitted on December 13, 2004.

A review of the documentation submitted by counsel clearly reflects that a response was submitted prior to the issuance of the director's Notice of Decision of January 3, 2005. As such, the response will be considered on appeal.

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 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.

At the time the Forms I-687 and I-485 applications were filed, the applicant was assigned alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file [REDACTED] all the documents from both applications were consolidated into the prior A-file.

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

- A California identification card (ID) issued on January 22, 1980.
- A letter dated May 30, 2003, from Reverend [REDACTED] pastor of Saint Catherine of Alexandria Catholic Church in Santa Catalina Island, California, who indicated that he has been the pastor of the church since 1993; however, "reputable and reliable parishioners and relatives, whose word I can thoroughly trust, assure me that [the applicant] has been here since 1979."
- A letter dated May 30, 2003, from [REDACTED], owner of Catalina Auto & Bike Rental and Buffalo Nickel Restaurant, who indicated that he has been acquainted with the applicant since 1982. The affiant attested to the applicant's employment at his businesses since the early 1990's.
- A Form 1099G, Report of State Income Tax Refund, from the California Franchise Tax Board for the 1986 tax year.
- Several earnings statements issued in 1979, 1980 and 1981.
- An earnings statement for the period ending March 31, 1984 from [REDACTED] Landing.
- Earnings statements for the periods ending July 20, 1984 and August 4, 1984 from [REDACTED] of Avalon.
- An earnings statement for the period ending September 15, 1984 from [REDACTED] It is noted that only the applicant's first name is listed.
- An earnings statement issued on July 6, 2004.
- An earnings statement for the period ending August 15, 1985.
- Earnings statements for the periods ending November 30, 1985, December 31, 1985, January 15 and 31, 2006, February 15, 1986, April 15 and 30, 1986, June 15, 2006, July 15 and 31, 1986, November 30, 1986, December 15, 1986, and April 30, 1987 from [REDACTED].
- A wage and tax statement for 1981 from Mexicali Inn in Avalon, California.
- A letter dated May 18, 1987 from the Internal Revenue Service regarding the name and social security number the applicant had previously used for the 1986 tax year.
- A notarized affidavit from a cousin, [REDACTED] of Santa Monica, California, who indicated that the applicant has been residing in the United States since 1979.
- A notarized affidavit from [REDACTED] of Los Angeles, California, who attested to the applicant's residence in Los Angeles since October 1979.
- A notarized affidavit from [REDACTED] of Avalon, California, who indicated that he has known the applicant since 1981 and attested to the applicant's moral character.

The applicant also submitted several earnings statements that have no probative value or evidentiary weight as the applicant's name was not listed on them.

On November 12, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that there were inconsistencies between his applications, documents and testimony, which impacted the credibility

of his claim to have resided in the United States during the requisite period. Specifically, on his Form I-589, Application for Asylum and Withholding of Removal, the applicant indicated that he was working for the Fourth Battalion of Infantry in El Salvador until 1989 and did not arrive in the United States until December 1989.

Counsel, in response, indicated that the applicant was born in Mexico and had resided in Mexico his entire life prior to coming to the United States in 1979. Counsel asserted, in pertinent part:

In all of the applications that he has made he has indicated that he was born in Mexico, with the exception of the application for asylum that was completed by a notary public in 1995. In that application, the form indicated that [the applicant] was from El Salvador. [The applicant] withdrew that application when he was interviewed by the Asylum office in 1994.¹

Counsel submitted a declaration from the applicant, which indicated that:

- He illegally entered the United States in October 1979 and resided with his sister for two months at [REDACTED] Venice, California.
- In December 1979, he resided with his sister in Avalon, Catalina Island.
- In January 1980, he obtained a California ID card and listed his brother's address as his place of residence.
- In March 1980, he moved to Los Angeles and resided with his brother at [REDACTED] for six months.
- He departed to Mexico and returned after six months in March 1981.
- He resided in Catalina from March 1981 to 1989 with his sister.
- He was employed as a cook at [REDACTED]'s Landing Restaurant from March 1981 to December 1981 and from January 1984 to May 1984.
- He worked for a construction contractor, [REDACTED], from January 1982 to December 1983 and as a cook at Casa Miguel Restaurant from May 1982 to September 1984.
- He worked for two weeks for [REDACTED] during October 1984 and he was unemployed until January 1985.
- He worked as a dishwasher for Flying Yachtman in Avalon, California until March 1985 and for a contractor building Hamilton Cove condominiums from March 1985 to August 1985.
- He worked as a cook for Harbor Grill Restaurant in Avalon, California from August 1985 to November 1987 and he was unemployed until January 1988.
- He worked in construction through June 1988.

The applicant, indicated, in pertinent part:

In 1995, I went to a notary public's office in order to investigate obtaining a work permit, and a social security card. I did this because I was unable to obtain them through the late amnesty application. The notary had me sign a form that was blank. He said that I would receive a work permit in about 3 months, which I did. I did apply for a 3-4 extensions of the work permit, but each time the notary completed the forms and told me to sign them without reading them.

¹ Counsel, in a letter dated February 21, 2005, apologized for the typographical error in his previous letter which indicated that the applicant withdrew his asylum application in 1994 instead of 2004.

I am not a citizen of El Salvador, nor have I ever served in the military of El Salvador. In my interview at the asylum office in November 2004, I withdrew the application for asylum, where it claimed that I was from El Salvador and that I had served in the military of El Salvador.²

Counsel submitted:

- An affidavit notarized December 2, 2004, from [REDACTED] of The Channel House Restaurant in Avalon, California, who indicated that she has known the applicant for the past 19 years and that the applicant was employed from 1985 to 1987 at Harbor Grill Restaurant on Catalina Island. The affiant asserted that the Harbor Grill Restaurant “no longer exists but we are still in the restaurant business on the Island and have continued a friendship with [the applicant].”
- Copies of the applicant’s birth certificate with English translation reflecting that he was born in Tlaquepaque, Jalisco, Mexico.
- A notarized affidavit from a niece, [REDACTED], who indicated that the applicant resided at her parents’ home at [REDACTED] from 1981 to 1989.
- A letter dated December 10, 2004, from [REDACTED], daughter of [REDACTED], who indicated that the applicant was employed at [REDACTED] Landing as a dishwasher from October 1981 to December 1981 and from January 1984 to April 1984.
- Several photographs of the applicant counsel claimed were taken during the qualifying period on Catalina Island, at [REDACTED] Landing Restaurant and in Avalon, California.

The applicant has submitted sufficient evidence to establish continuous unlawful residence in 1981 and from January 1984 to May 1987. However, there is a significant portion of time that has not been accounted for, namely 1982, 1983 and from June 1987 to May 4, 1988. The AAO does not view the remaining documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the periods in question.

The affidavit from [REDACTED] lacks probative value as he failed to state the applicant’s place of residence, provide details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant’s residence. [REDACTED] in his affidavit, indicated that the applicant has been residing in Los Angeles since October 1979. However, the applicant, in his declaration, indicated that he resided in Los Angeles for only six months in 1980.

The affidavits from the applicant’s niece and cousin must be viewed as having a self-evident interest in the outcome of proceedings, rather than as independent, objective and disinterested third parties. The letter from Pastor [REDACTED], has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). In addition, the applicant, on his Form I-687 application, did not indicate that he was affiliated with a church during the requisite period

The applicant claims to have been employed by other employers during the requisite period; however, he has not provided any evidence to support his claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of*

² According to the memorandum in the record, the applicant withdrew his asylum application because he had filed a LIFE application that was currently pending.

Soffici, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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, the Form I-589 application does not reflect that anyone other than the applicant completed the application, as no information is listed at Part G of the application; Part G of the application requests the name, address and signature of the person preparing the form. The applicant is therefore inadmissible under section 212(a) (6)(C)(i) of the Immigration and Nationality Act (the Act) for misrepresenting a material fact. Such grounds of inadmissibility may be waived pursuant to section 245A(d)(2) of the Act; 8.C.F.R. § 245a.18(c).

Given his failure to credibly establish continuous residence in the United States during the requisite period, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act and, therefore, the issuance of an application for waiver of inadmissibility is moot.

While not the basis for the denial of the application or the dismissal of the appeal, it is noted that the record reflects that on November 29, 1998, the applicant attempted to enter the United States at the San Ysidro port of entry by presenting a Form I-551, Permanent Resident Card, that belonged to his brother. The applicant was found to be inadmissible under sections 212(a)(6)(C)(i) and (7)(A)(i)(I) of the Act and served with Form I-860, Notice and Order of Expedited Removal. The applicant was expeditiously removed from the United States pursuant to section 235(b)(1)(A)(i) of the Act. The fact that the applicant was removed under this section of the Act, and then reentered without permission under section 212(a)(9) of the Act, renders him inadmissible. Such grounds of inadmissibility may be waived pursuant to section 245A(d)(2) of the Act; 8.C.F.R. § 245a.18(c).

As previously noted, given the applicant's failure to credibly establish continuous residence in the United States during the requisite period, the issuance of an application for waiver of inadmissibility is moot.

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