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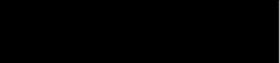
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES

Date:

**OCT 29 2008**

MSC 02 248 61877

IN RE:

Applicant:



APPLICATION:

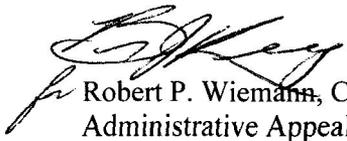
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

Self-represented

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 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, the applicant asserts that he does not agree with the director's findings. The applicant requests that his application be reconsidered.

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.

Citizenship and Immigration Services (CIS) records reveal that on November 18, 1988, the applicant was apprehended in Palo Verdes, California by the United States Border Patrol.<sup>1</sup> According to the Form I-213, Record of Deportable Alien, the applicant worked in Saudi Arabia from 1977 to 1987 and while employed in Saudi Arabia he met a man named [REDACTED] from Rollo, Missouri. In addition, the form indicated the applicant has been in the United States since 1987 and has been residing in a house belonging to [REDACTED] in Rollo, Missouri since his entry, and that he made one prior visit to the United States for 15 days in January 1986.

The record also contains a Form I-539, Application to Extend Time of Temporary Stay, dated June 11, 1987. The applicant indicated on the form that he entered the United States on May 6, 1987 as a nonimmigrant visitor. The applicant listed a wife and three children who were born in Pakistan and Saudi Arabia during the requisite period. At item 17, the applicant indicated that he has not been employed or engaged in business in the United States.

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

- A declaration indicating that since May 1986 he has been self-employed.
- A notarized affidavit from [REDACTED] of Lodi, California, who attested to the applicant's Lodi residence at [REDACTED] since October 1985. The affiant asserted that he used to be a neighbor of the applicant and is still friends with him.
- A notarized affidavit from [REDACTED] of Lodi, California, who attested to the applicant's [REDACTED] residence at [REDACTED] since March 1982. The affiant based his knowledge on having resided in the same hotel as the applicant and is still friends with him.
- A notarized affidavit from [REDACTED] of Lodi, California, who attested to the applicant's [REDACTED] residence at [REDACTED] since December 1981. The affiant based his knowledge on having resided in the same hotel as the applicant and is still friends with him.
- A Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from farm labor contractor, [REDACTED] of Lodi, California. [REDACTED] attested to the applicant's employment at various farms from June 10, 1981 to March 29, 1986.

On June 18, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted were at variance with the information provided on his Form I-687 application. Specifically, on his Form I-687 application, the applicant claimed to have resided at [REDACTED] Lodi, California from June 1981 to June 1986 and at [REDACTED] Los Angeles, California from June 1986 to the present. However, the affidavits submitted indicate that the applicant resided in Lodi during the requisite period. The director determined that the Form I-687 application and affidavit were not internally consistent with each other. The director also advised the applicant that at the time of his LIFE interview on October 11, 2005, he denied ever using the alias, [REDACTED]. The director indicated, in pertinent part:

Service records revealed indeed that is an alias you used to enter the United States in 1987. Under that name, Service record indicated you worked in Saudi Arabia from 1977 to 1987. While working there, you met [REDACTED] from Rolla, Missouri and later in 1987, you

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<sup>1</sup> The applicant was assigned alien registration file [REDACTED] and the documents from this proceeding have been consolidated into the LIFE application.

move to Missouri to join [REDACTED]. Service record also indicated that you and your wife claimed to have entered the United States in June 5, 1987 with three (3) children which you failed to indicate on any of your application. All three of your children were born abroad in 1982, 1983 and 1985. For these reasons the Service found your testimonial not credible.

The applicant was given 30 days in which to provide a response to the notice. The applicant, however, failed to respond to the notice, and accordingly, the director denied the application on July 23, 2007.

Regarding the inconsistencies between the affidavits and his Form I-687 application, the applicant, on appeal, asserts:

Please understand [sic] that it is such a long time that I have been living in the United States that I cannot recall everything as it really happened, and also I do not have documents to evidence my staying in this country since my arrival because I have been in so many addresses and for not having a place of my own I lost my most dearest papers.

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 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 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 6, 1987 as he has presented contradictory documents. The applicant, however, has not addressed these findings.

The director's findings tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

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 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 that the record reflects that a removal hearing was held on February 14, 1989, and the alien was granted voluntary departure from the United States on or before May 14, 1989. On August 30, 1989, a Form I-205, Warrant of Deportation was issued.

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