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U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 015 61781

Office: LOS ANGELES

Date: **JAN 29 2009**

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 office that originally decided your case. If your appeal was sustained, or if your case 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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On March 21, 2005, the Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had been convicted of three misdemeanors under the California Vehicle Code. The director also found that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant asserts that the applicant has been convicted of two misdemeanors, not three. Counsel asserts that the criminal judge reduced one of the applicant's misdemeanor convictions to an infraction pursuant to California Penal Code 17(d). Counsel does not address the issue of the applicant's continuous residence in the United States.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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. See 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. 245a.11(b). The applicant 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 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.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits that provide generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [*CSS* lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)."

The first issue in this proceeding is whether the applicant is ineligible for adjustment of status under the LIFE Act because of his criminal convictions.

The record reflects that the applicant was convicted of the following:

1. On June 10, 1993, in Pasadena Municipal Court, for driving with a suspended license, pursuant to California Vehicle Code § 14601.1(a) (docket # [REDACTED]);
2. On December 8, 2000, in Los Angeles Municipal Court, for Driving Under the Influence of Drugs or Alcohol (DUI), pursuant to California Vehicle Code § 23152(a), (docket # [REDACTED] and,
3. On November 13, 2002, in Los Angeles Municipal Court, for Driving Without a Valid License, pursuant to California Vehicle Code § 12500(a) (docket # [REDACTED])

All three of these offenses are punishable by less than one year imprisonment and are classified as misdemeanors under California law.

However, the record also reflects that on March 16, 2004, a judge from the Superior Court of California, County of Los Angeles, reduced the applicant's November 13, 2002, Driving Without a Valid License conviction from a misdemeanor to an infraction. Under California law, an infraction is not punishable by any imprisonment and is not considered a misdemeanor under the provisions of the LIFE Act. Therefore, the applicant has only been convicted of two misdemeanors and is not ineligible for adjustment under the LIFE Act based on his criminal record.

The director asserted that "[f]or purposes of receiving immigration benefits, the original conviction is used" and cited *Matter of Roldan*, Int. Dec. 3377 (BIA 1999) to assert that "no effect is to be given in immigration proceedings to a state action to expunge, dismiss, cancel, vacate, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute." The director's application of the decision in *Matter of Roldan* to the circumstances in the current case is incorrect. Counsel is correct that in the current case, the court did not erase the applicant's record of guilt, instead, it modified the original charge so that the applicant stood convicted of an infraction, not a misdemeanor. See *Matter of Cota-Vargas*, 23 I & N Dec. 849, holding that a criminal court's decision to modify or reduce an alien's criminal sentence is valid for immigration purposes regardless of the court's reason for the modification or reduction. The director's decision regarding this criminal issue is therefore withdrawn.

The second issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden and establish by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

On October 15, 2001, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On May 27, 2003, the applicant appeared for an interview based on the application.

The documentation that the applicant submits in support of his claim that he entered the United States before January 1, 1982, and resided continuously thereafter until May 4, 1988, consists of a 1983 pay stub from [REDACTED] 1982, 1983, 1984, and 1985 completion and merits certificates and a 1986 high school diploma from Inglewood Community Adult School; a 1986 certificate of completion of a Powers of Arrest course at the California Security Training School; a 1987 Diploma in Plumber Apprentice from the Associated Technical College; an affidavit from [REDACTED]; and, three employment verification letters.

The certificates from the various schools can be given minimal weight as evidence of the applicant's entry to the United States before January 1, 1982, and his required continuous residence. None of the certificates is accompanied by supporting documentation such as a letter from an official at the school authorized to verify the applicant's attendance at the school or official transcripts from the school. The certificates do not contain contact information to verify

the applicant's attendance at these schools and the certificates do not indicate the applicant's dates of attendance in these courses.

The fill-in-the-blank "Affidavit of Witness" form from [REDACTED] can be given minimal weight as evidence of the applicant's required continuous residence as it contains minimal details regarding any relationship with the applicant during the requisite period. The form states that the affiant has personal knowledge that the applicant has resided in the United States in Los Angeles, California, from January 1986 to the date the affidavit was signed. The form language allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following facts: ____." Mr. [REDACTED] added: "I met [REDACTED] at the [REDACTED] where he used to sing. Since then we became good friends and frequently see each other at work." [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States in 1981. While he asserts that he has seen the applicant regularly since 1986, [REDACTED] also fails to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period. Lacking such relevant detail, the statement can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The employment verification letters from [REDACTED], [REDACTED], and [REDACTED] can be given minimal evidentiary weight as they fail to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Specifically the employers do not provide the applicant's address at the time of employment, show periods of layoff, or declare whether the information was taken from company records, or 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 remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in January 1981, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that the resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

ORDER: The appeal is dismissed.