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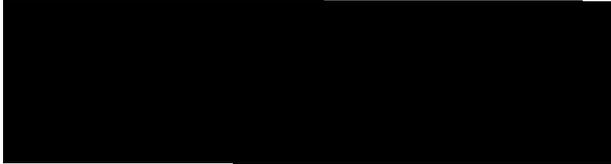
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090

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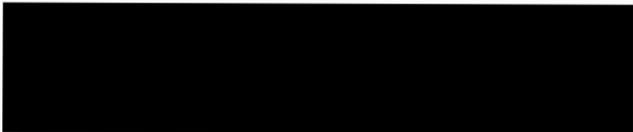
Applicant:



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).

IN 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.

John F. Grissom  
Acting 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 it was determined that the applicant had been convicted of at least three misdemeanors in the United States.

On appeal, counsel asserts that the applicant has been convicted of only one misdemeanor and, as such, the applicant should be granted resident status.

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. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record contains a Misdemeanor Probation Order from the Napa County Superior Court, which indicates that on July 26, 2000, the applicant was found guilty of violating sections 23103/23103.5 VC, reckless driving, and 16028(a) VC, driving without evidence of financial responsibility. The applicant was placed on probation for three years and ordered to pay a fine. [REDACTED]

Based on this Order, the director, in denying the application, determined that the applicant had been convicted of three misdemeanors.

Under California law, section 16028(a) VC, driving without evidence of financial responsibility, is an infraction, punishable by a fine with no jail time. *See* sections 40000.1 VC and 42001 VC.

As such, the applicant has not been convicted of three misdemeanors in the United States and, therefore, the director’s finding will be withdrawn.

However, during the adjudication of the applicant’s appeal, information came to light that adversely affects the applicant’s overall credibility as well as the credibility of his claim of residence in the United States from prior to January 1, 1982 to 1987.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s de

novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

An applicant for permanent resident status under section 1104 of the LIFE Act must establish 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. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided several affidavits of residence, employment letters, postmarked envelopes, and a California identification card issued on August 13, 1987.

The AAO issued a notice to the applicant on April 22, 2009, informing him that it was the AAO's intent to dismiss his appeal based upon the following:

[REDACTED], in his affidavit, listed addresses where you resided during the requisite period. These addresses, however, do not correspond with what you claimed on your Form I-687 application. All the affidavits lack probative value as no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The affidavits failed to provide details regarding the nature or origin of the affiant's relationship with the applicant or the basis for the affiant's continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate your claim of continuous residence for the entire requisite period seriously detracts from the credibility of the applicant's claim. Therefore, the applicant had not met his burden of proof.

Some of the photocopied postmarked envelopes you provided list an address that does not correspond with what the applicant claimed on his Form I-687 application.

The employment letters from MC Landscaping, Sonoma-Cutrer Vineyards and Allende's Landscaping do not meet the regulatory requirements outlined in 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, the applicant did not claim employment with Sonoma-Cutrer Vineyards on his Form I-687 application.

At the time of his Life interview, the applicant admitted in a sworn statement that he went to Mexico every two years from one to one and a half months to visit his family. However, on his Form I-687 application, he only listed one absence from the United States; October 1987 to November 1987. No explanation has been provided why the applicant failed to disclose these other absences on his Form I-687 application. The application advised the applicant to list *all* absences from the United States since January 1, 1982.

The applicant was granted 30 days to provide substantial new evidence from credible sources to overcome, fully and persuasively, these findings.

Counsel, in response, submitted declarations from the applicant and his sister, [REDACTED]

In her declaration, the applicant's sister indicates that the applicant resided with her or family members since arriving in the United States in 1979. The affiant indicates that the applicant resided with her at [REDACTED] Van Nuys, California and [REDACTED] Van Nuys, California for many years. The affiant asserts that she did not keep records from 20 years ago and

provided evidence of her identity in the form of a California driver license issued in 2005, a 1997 lease agreement, pay stubs from 1995 to 2004, and a Form I-551, Permanent Resident Card. The affiant asserts, in pertinent part:

Was brother has limited primary education and fell victim to people whom he believed were attorneys. Since he first moved to the U.S. he worked a field worker; seasonal work which often took him up north. He lived with family and then during the field work, he lived at various locations.

In his declaration, the applicant asserts that he was a victim of a notario, of SBS Immigration Inc., whom he hired years ago to help him with his papers. The applicant claims that "failed to prepare the application with the correct information and negligently handles my cases, failing to accurately relay the facts of my story in the applications. I naively trusted her. I apologized for the errors in my application, but I cannot read or write well."

Citizenship and Immigration Services, however, is not responsible for the purported inaction of applicant's representative.

In regards to the discrepancies in the addresses, postmarked envelopes and absences, the applicant asserts, in pertinent part:

I worked as a field worker and that type of work is seasonal. I would work and live at or near the fields during the particular season and then I would return to my home and live with my family.

My family home was my main address, and all of the other locations were where I spent the night for weeks or months at a time. They were not really my residence but I slept there until the job was completed and while I was at a particular location I would receive mail at those temporary locations which are most of the addresses on the photocopied envelopes.

All of the letters previously submitted in support of my presence were prepared by the immigration consultant and my family members, friends, and employers signed them without questioning the notario, all of which contributed to the errors.

Another explanation for the confusion is that my original I-687 was completed in July of 1993 and at that time, my one absence from the U.S. was in 1987. This response was correct at the time it was made and again in 1994 when I signed the oath statement.

I did not intend to inform the officer at the interview that I left the U.S. every 2 years since I first moved here. I intended to say that I departed the U.S. 2 times, two years apart, since 2002.

An inference cannot be drawn that the information or documentation submitted is now accurate simply because the applicant recants his admission. Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965). It is noted that the sworn statement was taken in the applicant's native language, Spanish, and an interpreter was requested or used.

Regarding his employment during the requisite period, the applicant asserts he was employed by Allende's Landscaping from January 20, 1982 to December 10, 1990, Sonoma Cutrer Vineyards in 1985 and 1986, and at MC Landscape Care from January 9, 1980 to December 22, 1981. The applicant asserts that it is impossible to obtain any new evidence from Allende's Landscaping as the owner has passed away and the company no longer exists. The applicant asserts that Sonoma Cutrer Vineyards and MC Landscape Care do not have any record of his employment due to the passage of time and new ownership. The applicant asserts that he received his wages in cash or by check, but did not receive Form W-2's or 1099's from his employers.

The applicant's remarks are noted; however, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

While the applicant's Form I-485 (LIFE) application was prepared by SBS Immigration Inc., the applicant's Form I-687 application, which contains the contradicting information, does not reflect that anyone other than the applicant completed the application. No information is listed in items 48 and 50 of the Form I-687 application; items 48 and 50 of the application request the name, address and signature of the person preparing the form. The applicant's claim that SBS Immigration Inc. prepared the employment letters is not plausible. Furthermore, it is unclear why the applicant would provide pay stubs purportedly issued in 1982, but none for the latter part of the requisite period.

The applicant claims that he worked as a field worker, which was seasonal. However, the employment letter from Allende's Landscaping indicates that the applicant was a landscaper during the requisite period. The employment letter makes no mention of the applicant leaving in order to engage in seasonal work as a field laborer.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [REDACTED] has been submitted to resolve his contradicting affidavit or to corroborate the applicant's amended statement. As such, the affiant's affidavit has little probative value or evidentiary weight.

As previously noted the affiants' statements provided do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities

and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant's whereabouts and activities throughout 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, 591-92 (BIA 1988). The applicant submitted no competent objective evidence resolving the inconsistencies in the record and showing that he was present and living in the United States from 1981 to 1987.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). 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.

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