

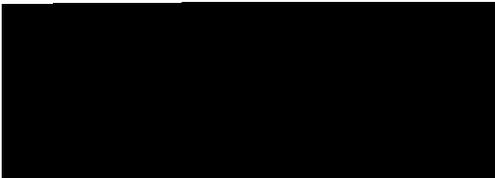
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



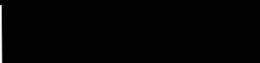
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:



MSC 02 249 61898

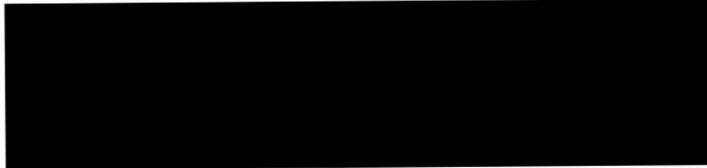
Office: LOS ANGELES

Date:

MAR 06 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).

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. Grisson, 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 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. The director also denied the application because the applicant had been convicted of at least three misdemeanors in the United States.

On appeal, counsel states that, taken in its entirety, the evidence on record including the applicant's testimony strongly establishes that the applicant satisfied the preponderance of the evidence standard and clearly established the statutory requirements for permanent residency.

The first issue to be addressed is the applicant's criminal history.

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 FBI report dated September 23, 2002, reveals the applicant's criminal history in the state of California as follows:

1. On January 1, 1983, the applicant was arrested under warrant ([REDACTED]) by the Long Beach Police Department for prostitution. The applicant was also arrested for lewd conduct.
2. On May 21, 1986, the applicant was arrested by the Long Beach Police Department for lewd conduct.

On November 18, 2002, the director issued a notice, requesting the applicant to submit the final court dispositions for arrests mentioned above. Counsel, in response, submitted the following:

- A booking and property record from the Los Angeles County Jail and a Disposition or Arrest and Court Action from the California Department of Justice for number two above. The disposition reflects that the applicant was charged with violating section 647(a) PC, lewd or obscene conduct and section 415(3) PC, offensive words in public place. On May 23, 1986, the applicant pled *nolo contendere* to violating section 415(3) PC, a misdemeanor. The applicant was placed on probation for one year and ordered

to pay a fine and sentenced to serve three days in jail. The remaining charge, 647(a) PC, was dismissed pursuant to section 1385 PC. [REDACTED]

- A booking and property record from the Los Angeles County Jail, which reveals that on May 4, 1986, the applicant was arrested under the alias [REDACTED] for driving without a license, a violation of section 12500(a) VC.
- A booking and property record from the Los Angeles County Jail, a Disposition or Arrest and Court Action from the California Department of Justice and a court disposition from the Los Angeles County Municipal Court, which reflects that on January 1, 1988, the applicant was arrested for prostitution, a violation of section 647(b) PC. On January 4, 1988, the applicant was charged and convicted of this misdemeanor offense. The applicant was placed on probation for one year, ordered to pay a fine or serve ten days in jail. [REDACTED]
- Additional Charges and Holds Record dated January 1, 1988, from the Los Angeles County Sheriff's Department reflecting that the applicant had bench warrants [REDACTED] and [REDACTED] issued on July 2, 1986 and September 29, 1986, under the alias [REDACTED] for violating section 12500(a) VC, driving without a license, and 647(a) PC, disorderly conduct, respectively.

On September 11, 2006, the director issued a Form I-72, requesting the applicant to submit the final court dispositions for all arrests. The record does not contain the final court dispositions for the applicant's arrests on May 4, 1986, for driving under the influence and on January 1, 1983, for lewd conduct.

On June 8, 2007, the director issued a Notice of Intent to Deny, which advised of his criminal history. The applicant was given 30 days in which to submit a response. The applicant, however, failed to submit a respond to the notice.

Counsel, on appeal, neither addresses the applicant's criminal history nor provides any evidence to overcome the director's finding.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by U.S. Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for the benefit being sought because he failed to provide all the requested court documentation necessary for the adjudication of the application. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The second issue to be addressed 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.

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 the following evidence:

- A California driver license issued on March 22, 1988.
- A letter from a representative of McDonald's in Long Beach, California, who attested to the applicant's employment since February 1988.
- An employment statement dated August 29, 1990, from [REDACTED] who attested to the applicant's employment as a busboy at [REDACTED] from 1986 to 1988.
- A statement dated August 29, 1990, from [REDACTED] who indicated that the applicant worked with him Mondays through Thursdays in downtown Long Beach [REDACTED] since 1982. The affiant asserted that he was employed in security and the applicant was employed in maintenance.
- An affidavit from [REDACTED] who attested to the applicant's residence in the United States since 1983.
- An affidavit from an affiant whose name is indecipherable and claims to be the owner of [REDACTED] in Los Angeles, California. The affiant attested to having known the applicant since August 1981. The affiant asserted that in August 1981, the applicant came to his place of business "asking for a cleaning and maintenance position and he was employed up to October 1981." The affiant asserted that in 1985, the applicant came to his place of business as a client and from that date the applicant agreed to work for him as a manager.

On June 8, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was granted 30 days in which to submit a response. The applicant, however, failed to respond to the notice. Accordingly, on December 3, 2007, the director denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

The U.S. Citizenship and Immigration Services (USCIS) 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, USCIS 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 counsel 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 4, 1988.

The statement from [REDACTED] raises questions to its authenticity as the affiant indicated that the applicant was employed from 1982 through the date of his 1990 statement. However, the applicant claimed to have been employed at [REDACTED] from 1982 to 1985.

The statement from [REDACTED] also lacks probative value as it failed to state the applicant's place of residence during the requisite period, 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 the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

The employment statements from [REDACTED] and the affiant with the indecipherable name lack probative value as they failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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 addition, the applicant did not claim on his Form I-687 application employment at [REDACTED] and the alleged employment dates with this entity do not coincide with any dates of employment claimed on the applicant's Form I-687 application.

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).

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 (5th 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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