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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 353 60409

Office: LOS ANGELES

Date:

MAR 19 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the National Benefits Center. 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. 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 District Director, Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant does not state a reason for the appeal. He states that he is submitting a declaration from his neighbor, stating that fire destroyed the applicant's property. With his appeal the applicant submits only an affidavit from his neighbor which discusses fire damage to the applicant's property.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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).

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 the Notice of Intent to Deny (NOID), dated October 22, 2004, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID, the applicant submitted a statement from [REDACTED] stating that the applicant’s documents were destroyed by fire when her house burned down on December 12, 2000. The applicant also submitted a copy of a Field Incident Report issued by the Los Angeles Fire Department regarding a fire incident at [REDACTED], on December 12, 2000.

In the Notice of Decision, dated January 26, 2005, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, however, the information submitted was insufficient to overcome the reasons for denial as stated in the NOID. The director noted, specifically, that the applicant stated that his documents were burnt when fire destroyed his sister’s house, however, the Los Angeles Fire Department report showed that the fire damage was to an automobile and parking structure/garage, and there was no mention in the report of the house burning down.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status, and his physical presence, during the requisite period. In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submits a letter of employment and four affidavits as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a letter of employment, notarized on November 27, 1990, from [REDACTED], of [REDACTED] located at [REDACTED], Van Nuys, California. Mr. [REDACTED] states that the applicant had been employed with his company for several years. However, [REDACTED] did not indicate a date when the claimed employment commenced, and the capacity in which the applicant was employed. Also, [REDACTED] failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits & Letters

The applicant submitted the following:

1. A sworn affidavit from [REDACTED], notarized on November 20, 1990. Mr. [REDACTED] states that he has known the applicant since 1981, and lists the applicant's addresses from January 1, 1981. The affiant, however, does not indicate how he dated his acquaintance with the applicant.
2. Two affidavits from [REDACTED], dated December 6, 1990, and July 23, 2001. In her first affidavit [REDACTED] states that the applicant, her brother, came to the United States to live with her in January 1981; that he did not attend school because he did not know English and did not want to attend school; that he stayed home taking care of her house and watching her children until he found a job and subsequently moved out to live with her other sisters. In her second affidavit, [REDACTED] adds that on December 12, 2000 her house burned down, and, the applicant's documents, which purportedly show that he had been living with her, were destroyed in the fire.
3. A notarized letter from [REDACTED], sworn to on August 22, 2001, stating that the applicant has been residing in the United States since before 1981. Ms. [REDACTED] states that when the applicant arrived from Mexico he was 11 years old and he lived with his sister at [REDACTED] Sun Valley, California.
4. Two notarized letters from [REDACTED]. The first letter (in Spanish, with an English translation), dated June 2, 2001, states that she has known the applicant since 1986. Ms. [REDACTED] states that she met the applicant through his sister, [REDACTED] who has been her friend and neighbor since 1981. In her second letter, notarized on February 24, 2005, Ms. [REDACTED] adds that in December 2000 the applicant's home was affected by a fire which burned down the garage, and his personal belongings that were stored in the garage, including his letters, pictures, and clothes.

In addition, as noted above, the applicant submitted a Field Incident Report issued by the Los Angeles Fire Department, Los Angeles, California, regarding a fire incident at [REDACTED] on December 12, 2000.

The applicant has submitted a letter of employment and five affidavits in support of his application. However, the applicant has provided questionable documentation. The applicant claims that he has resided in the United States since January 1981, when he was 11 years old, and lived with his sister, [REDACTED]. On his Form G-325A the applicant listed his address from January 1981 to May 1988 as [REDACTED] N.H. California. On his Form I-687, however, the applicant indicated that he lived at [REDACTED] from December 1981 until November 1987. Also, [REDACTED], who attested to knowing that the applicant had resided in the United States since 1981, stated in her affidavit that the applicant lived with his sister, and at that time his residence address was [REDACTED], Sun Valley, California. However, the applicant indicated on his Form G-325A that he resided at [REDACTED], Sun, California, starting in January 1990. It is noted that the applicant did not indicate on his Form I-687 application, signed on December 8, 1990, that he ever resided at [REDACTED] Sun Valley, California. In addition, [REDACTED] attested that the applicant resided at [REDACTED], [REDACTED], from December 1982 to November 1987. However, as previously discussed, the applicant indicated on his Form G-325A that he resided at [REDACTED], from January 1981 to May 1988; and, on his Form I-687 application, the applicant indicated that he resided at [REDACTED], from December 1981 to November 1987, and that he resided at [REDACTED], North Hollywood, California from November 1987 to December 1988.

The above discrepancies cast considerable doubt on whether the applicant's claimed residence in the United States is true. These discrepancies in the claimed and stated residences are significant because the applicant claims that his documents were destroyed in a fire at his sister's residence at [REDACTED], where he had previously resided, and therefore, he is unable to provide primary evidence of his residence in the United States during the requisite period.

In addition, there are significant inconsistencies in the submissions pertaining to fire damage. The applicant's claim that as a result of the fire damage his documents were burnt is questionable. The Field Incident Report issued by the Los Angeles Fire Department regarding a fire incident at [REDACTED], on December 12, 2000, indicates damage to mobile property inside a structure used for vehicle storage, and describes the property damaged as a "General Use Small – One Ton Make Ford" truck. The fire report does not indicate damage to the structure where the vehicle was stored, or to any other property within the structure. The Fire Report contradicts the affidavits of [REDACTED] and [REDACTED]. [REDACTED] attests that the applicant lost all his documents because her "house burned down along with all papers or proof that he [the applicant] has been living ... in the United States since 1981." [REDACTED] states that the applicant's documents were destroyed by fire "which burned down their garage." However, based on the Los Angeles Fire Department report there is no indication that the house,

or the garage, or property (other than a Ford truck) was damaged, nor is there any indication in the fire report that a house, or garage, "burned down" as these affiants stated. It is also noted that the fire report does not state that the Ford truck "burned down" either, only that it was damaged by fire. The Los Angeles Fire Department fire report does not infer that the fire damaged the garage or any other property besides the vehicle.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 as he claimed. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

In addition, although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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. 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, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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. This decision constitutes a final notice of ineligibility.