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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES Date:
MSC 03 245 62039

MAR 20 2009

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 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 argues that the director did not provide the applicant an opportunity to clarify any perceived deficiencies concerning certain fact he testified to at the time of his interview. 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).

On September 26, 2006, the director issued a Form I-72, requesting the applicant to submit the final court dispositions for all arrests. The applicant, in response, submitted a court disposition from the Orange County Superior Court in California, which revealed that on November 28, 1997, the applicant was arrested and subsequently charged with driving under the influence with a prior, a violation of section 23152(a) VC, driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, and driving while license is suspended or revoked for driving under the influence with a prior, a violation of section 14601.2(a), all misdemeanors. On December 2, 1997, the applicant pled guilty to all charges. The applicant was sentenced to serve 15 days in jail, ordered to pay a fine and attend an alcohol abuse program and placed on probation for five years. Case no. [REDACTED]. It is noted that the court disposition indicates that the applicant "admits prior conviction(s)."

On December 4, 2007, the director issued a Notice of Intent to Deny, which advised of his ineligibility for permanent residency due to his three misdemeanor convictions. The applicant, however, failed to submit a response 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 due to his three misdemeanor convictions. 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). 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).

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

- An affidavit from [REDACTED] of Santa Ana, California, who indicated that he met the applicant in 1981 at [REDACTED]. The affiant asserted that he has remained good friends with the applicant since that time.
- An affidavit from [REDACTED] of Orange, California, who attested to the applicant’s California residences at [REDACTED] from June 1981 to December 1983; [REDACTED] from January 1984 to December 1987; and [REDACTED] from January 1988 to December 1989. The affiant indicated that he was a coworker of the applicant and attested to the applicant’s honesty.

The record contains a statement taken under oath signed by the applicant on May 1, 1996, indicating that he first entered the United States in January of 1987.

On December 4, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that two 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 also advised of his sworn statement taken on May 1, 1996. The applicant was granted 30 days in which to submit a response. The applicant, however, failed to respond to the notice. Accordingly, on January 16, 2008, the director denied the application.

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 affidavit from [REDACTED] 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. Likewise, [REDACTED] in his affidavit, failed to provide any details regarding the nature of his relationship with the applicant or the basis for their 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.

Counsel's assertion that the applicant was not given an opportunity to clarify any perceived deficiencies concerning his testimony at the time of his interview is without merit. The regulation at 8 C.F.R. § 103.2(16)(i) requires the director to notify the applicant of his intent to deny the application when an adverse decision is proposed. The director did so in his notice of December 4, 2007. As previously noted, the applicant did not reply to the notice.

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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.