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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC 01 306 60300

Office: LOS ANGELES

Date: **OCT 08 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).

ON 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.

[Signature]

Perry Rhew
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 before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had failed to assist United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) as required under 8 C.F.R. § 245a.18(e), because he had not provided requested court documents relating to his criminal history. The director further determined that the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application.

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period and asserts that the applicant has submitted evidence in support of such claim.

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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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.

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.* At 80. 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

The first issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on December 9, 1993. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, the applicant listed [REDACTED]. It must be noted that the applicant failed to provide any information at either part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry or part #36 where applicants were asked to list all employment in the United States since first entry.

Subsequently, the applicant filed his Form I-485 LIFE Act application on August 2, 2001.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater

weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

Although the applicant did not claim that he used the name [REDACTED] at part #4 of the Form I-687 application, the applicant submitted documentation in this name in support of his claim of continuous residence in this country for the period beginning in April 1985 through May 4, 1988. This documentation included: workers' compensation claim forms and related correspondence; appointment notices for doctors; lottery claim forms; employment letters; earnings statements; a State of California Division of Motor Vehicle Road Test Score Sheet; tax documents; receipts for money orders; a membership card from a health spa; an employee identification card; and, two separate State of California Commercial Driver Licenses. While the applicant's failure to list the name [REDACTED] at part #4 of the Form I-687 application does raise questions as to whether the applicant had in fact used this name, any doubts are overcome because he submitted both an employee identification card and a State of California Commercial Driver License bearing his photograph in the name [REDACTED]. Such documentation is considered to be the most persuasive evidence of common identity pursuant to 8 C.F.R. § 245.2(d)(2)(ii). Consequently, the examination of the applicant's claim of residence in this country for the requisite period shall be limited to that period from prior to January 1, 1982 up to April 1985.

The applicant provided a letter containing the letterhead of LAACO in Los Angeles, California that is signed by [REDACTED] of Human Resources. [REDACTED] declared that [REDACTED] was employed by the Riviera Country Club as a pantryman from March 24, 1979 to June 28, 1983. However, [REDACTED] did not provide either [REDACTED] address during his employment with this enterprise or relevant information relating to the availability of business records reflecting the employment of [REDACTED] as required by 8 C.F.R. § 245a.2(d)(3)(i). More importantly, [REDACTED] failed to attest that [REDACTED] and the applicant were in fact one and the same person and did not provide any other pertinent information put forth in 8 C.F.R. § 245.2(d)(2)(ii) to establish the common identity of the applicant and [REDACTED].

The applicant included affidavits that are signed by [REDACTED], [REDACTED], and [REDACTED], respectively. While the affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status since prior to January 1, 1982. The director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application on March 16, 2004.

Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. While counsel asserts that USCIS should contact the individuals that provided supporting documents and verify their testimony, counsel fails to advance any compelling reason as to why any verification attempts should be made in light of the doubtful probative value of the general and vague testimony contained in the applicant's evidence of residence. The applicant himself has failed to provide any testimony relating to critical elements of his claim of residence including his addresses of residence and employment history in this country for the requisite period.

The absence of sufficiently detailed and verifiable supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no 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 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

The next issue to be determined is whether the applicant is ineligible because he failed to provide requested court documents necessary for the adjudication of the application and to demonstrate that he is admissible.

Declarations by an alien that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to verification by the Service or its successor USCIS. The alien must agree to fully cooperate in the verification process. Failure to assist the Service or its successor USCIS in verifying information necessary for proper adjudication may result in denial of the application. 8 C.F.R. § 245a.18(e).

The record contains reports from the Federal Bureau of Investigation (F.B.I.) that are dated September 20, 2003 and September 5, 2001, respectively, which based upon fingerprint comparison reflect that the applicant, using the name [REDACTED], was arrested for driving under the influence and weaving by the Colorado State Police in Fort Morgan, Colorado on April 6, 1991.

The record shows that the director has requested that the parties provide court documents to establish the disposition of the criminal charges brought against the applicant on April 6, 1991.

On appeal, counsel states that the applicant will be submitting the requested court documents reflecting the disposition of the criminal charges brought against him on April 6, 1991. However, as of the date of this decision, neither counsel nor the applicant has provided requested court documents to show the disposition of these criminal charges. It is concluded the applicant has failed to provide documents necessary for the adjudication of the application and to demonstrate that he is admissible to the United States as required pursuant to 8 C.F.R. § 245a.12(e).

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 Act, and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.12(e). The applicant has failed to meet this burden. By not providing necessary evidence, he has failed to establish he is admissible under the provisions of sections 212(a) of the Act and section 1140 of the LIFE Act. For this additional reason, the applicant is ineligible to adjust to permanent resident status under section 1104 of the LIFE Act.

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