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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 - 2090



**U.S. Citizenship  
and Immigration  
Services**

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FILE:

MSC 03 144 60566

Office: LOS ANGELES

Date:

APR 07 2010

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:

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.

*Elizabeth McCormack*

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988 in the United States. Further, the director found that the applicant submitted fraudulent documentation including photographs, thereby undermining the credibility of all of his evidence.

On appeal, the applicant stated that it is extremely difficult to obtain records going back to the early 1980s. The applicant did not address the director's specific concerns about the submission of fraudulent photographs.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

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).

In the Notice of Intent to Deny (NOID), the director stated that the applicant failed to submit sufficient credible evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted fraudulent documentation including photographs. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that the applicant did not submit evidence in response to the director’s NOID. In the Notice of Decision, the director denied the application based on the reasons stated in the NOID, and again noted the specific instances of fraud. On appeal, the applicant does not address the issue of fraud.

The record contains approximately 15 photographs. In his NOID, the director noted the following:

- The applicant submitted a photograph of himself in a video rental store that has posters advertising the movies “The Running Man” and “Steel Dawn.” The applicant annotated this photograph as taken in July 1982. The director determined that the photograph is fraudulent because the movies were released in November 1987, not in 1982 or earlier.
- A photograph of the applicant standing on a bed with a calendar behind him which he annotated as taken in 1984. The director noted that the calendar in the photograph is for 1989, not 1984; therefore, the photograph was fraudulent.
- A photograph of the applicant at a birthday celebration that he annotated as taken in November 1985 also shows an individual wearing a black T-shirt with the Words “Scorpions USA 1988” written on it. The director determined that the T-shirt was printed no earlier than 1988; therefore, the photograph is fraudulent.

The applicant did not contest these findings of the director, calling into question the veracity of the remaining evidence submitted by the applicant. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile

such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters or declarations from friends as evidence to support his Form I-485 application. Here, the submitted evidence is not sufficient.

The declarations from [REDACTED] and [REDACTED] indicate that the declarants have known the applicant for some or all of the requisite period and that they attest to the applicant being physically present in the United States during some or all of the required period. These declarations fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the declarations provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, declarations 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the declarations do not indicate that their assertions are probably true. Therefore, they have little probative value.

In an application for asylum Form I-589, the applicant indicated that his only entry into the United States was on May 1, 1988. This directly contradicts the applicant's assertions that he resided in the United States from before January 1, 1982. Similarly, in an application for cancellation of removal, the applicant indicated that he began residing in the United States in May 1988. This also directly contradicts the applicant's assertions that he resided in the United States from before January 1, 1982.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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 throughout the requisite period, 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.

It is noted that according to an FBI report based on the applicant's fingerprints, he was charged and convicted of disorderly conduct/soliciting prostitute in 1994.

According to court documents, on June 17, 2004, the applicant was charged with violating section 314.1 of the California Penal Code (PC), indecent exposure; and two counts of violating section 647(a) PC, disorderly conduct/lewd conduct. The applicant pled guilty to the amended charge of violating PC § 415(2), disturbing the peace (Superior Court of California, Orange County, [REDACTED]). The record shows a protective order was issued against the applicant.

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