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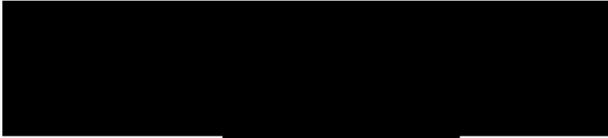
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

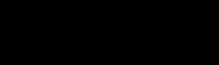
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MAY 14 2010

FILE:



Office: GARDEN CITY

Date:

MSC 02 226 60919

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, Garden City, New York, and is now before the Administrative Appeals Office (AAO) 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 since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.<sup>1</sup>

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence to demonstrate such claim. Counsel requests a copy of the record of proceedings and indicates a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number NRC2008003652 and mailed a copy of the record to counsel on May 7, 2009. The brief subsequently submitted by counsel has been incorporated into the applicant's appeal.

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).

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<sup>1</sup> A review of the record reveals that the applicant attempted to enter the United States at Los Angeles International Airport without a Form I-512, Authorization for Parole of an Alien into the United States, on January 15, 1992. The record shows that the Service officer who inspected the applicant ordered that he placed into exclusion (now referred to as removal) proceedings based upon the determination that he was inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act) as an immigrant who did not possess a valid entry document. The record reflects that the applicant failed to appear for his scheduled hearing in the exclusion proceedings on April 9, 1992. As a result, the Immigration Judge ordered that the applicant be excluded and deported from the United States on April 9, 1992. However, the handwritten notation on the order of the Immigration Judge indicates that the applicant was found inadmissible under section 212(a)(5)(A) of the Act as an immigrant who did not possess a Labor Certification. Nevertheless, the applicant is not inadmissible under either sections 212(a)(5) or 212(a)(7)(A) of the Act as the statute at section 245A(d)(2)(A) of the Act and the regulation at 8 C.F.R. § 245a.18(b) specifically state that sections 212(a)(5) and 212(a)(7)(A) of the Act are not applicable to legalization and LIFE Act applicants, respectively.

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.

At issue 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 February 15, 1990. At part #36 of this Form I-687 application where applicants were asked to all employment in the United States since first entry, the preparer of the application indicated that the applicant worked as a self-employed laborer at a construction site from 1984 to the date the Form I-687 application was filed on February 15, 1990, and that supporting documentation would be forthcoming at his interview. Nevertheless, the record does

not contain any supporting documentation to reflect that the applicant had been a self-employed laborer at a construction site during any portion of the period in question.

Subsequently, the applicant filed his Form I-485 LIFE Act application on May 14, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits signed by [REDACTED] and [REDACTED]. Although all of these 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 applicant included two separate affidavits both of which are signed by [REDACTED]. [REDACTED] declared that he resided with the applicant at [REDACTED] in Moreno Valley, California from 1981 to 1989. [REDACTED] stated that he had been a head chef at Maharani Cuisine of India in Los Angeles, California and that the applicant worked with him in an unspecified position at this enterprise from 1981 to 1984. However, [REDACTED]'s testimony that the applicant worked at Maharani Cuisine of India conflicted with the testimony at part #36 of the Form I-687 application indicating that the applicant had only been employed during the requisite period as a self-employed laborer at a construction site.

The applicant submitted an employment affidavit signed by [REDACTED] who noted that he was the owner of [REDACTED] and that he employed the applicant in an unspecified position at his restaurant from 1984 to 1989. Regardless, [REDACTED] failed to identify the exact dates of the applicant's employment, did not provide the applicant's address at the time of employment, did not specify the applicant's duties, and did not provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, [REDACTED]'s testimony that the applicant had worked at his restaurant from 1984 to 1989 contradicted the testimony at part #36 of the Form I-687 application indicating that the applicant had only been employed as a self-employed laborer at a construction site from 1984 to February 15, 1990.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on October 1, 2007.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel declares that the director utilized an improper evidentiary standard to evaluate the applicant's supporting documents. Counsel objects to the director's failure to contact affiants who had provided supporting documents in order to verify their testimony. However, as has been discussed above, the record is absent supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. Even if director utilized a higher

evidentiary standard to adjudicate the instant application, which he did not, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulations at 8 C.F.R. § 245a.2(d)(5) and 8 C.F.R. § 245a.12(e), as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

The absence of sufficiently detailed supporting documentation and existence of conflicting testimony concerning the applicant's employment history 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 and the inconsistent and conflicting testimony contained in the record, 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Beyond the director's decision, the next issue to be examined in this proceeding is whether the applicant has submitted sufficient documentation relating to his criminal history to determine that he is admissible to the United States under the provisions of section 212(a) of the Act as required by 8 C.F.R. § 245a.12(e).

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 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 record contains a copy of the results of the applicant's Federal Bureau of Investigation fingerprint check dated February 27, 2004 and court dispositions. These documents reflect the following information relating to the applicant's criminal history:

- An arrest on October 29, 1990 for one count of *driving under the influence of alcohol and/or drugs causing bodily injury* by the Riverside, California Police Department with agency [REDACTED]
- An arrest on December 21, 1994 for two separate counts of *driving while intoxicated* by the New York City Police Department with agency [REDACTED] and subsequent conviction in the Criminal Court of Queens County on January 12, 1995 for a violation (an infraction) of section 1192.1, *driving while ability impaired*, of the New York Vehicle and Traffic Law with a fine of \$450.00 and ninety day suspension of his drivers license.
- An arrest on May 22, 1996 for two separate counts of *driving while intoxicated* by the New York City Police Department with agency [REDACTED] and subsequent conviction in the Criminal Court of Queens County on May 23, 1996 for a misdemeanor violation of section 1192.3, *driving while intoxicated*, of the New York Vehicle and Traffic Law with a fine of \$500.00 and ninety day suspension of his drivers license.

The record shows that as of the date of this decision, the applicant has failed to submit the court disposition relating to his arrest on October 29, 1990 for one count of driving under the influence of alcohol and/or drugs causing bodily injury by the Riverside, California Police Department with agency [REDACTED]. Therefore, the applicant has failed to establish that he is admissible to the United States under the provisions of section 212(a) of the Act as required by 8 C.F.R. § 245a.12(e). Consequently, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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