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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: DALLAS

Date:

DEC 22 2008

MSC 02 046 60535

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

Robert P. Wiemann, 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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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.

On appeal, counsel for the applicant restates portions of the Code of Federal Regulations and asserts that submitted evidence resolves inconsistencies noted by the director.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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).

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. 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 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 (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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included.

The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

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 applicant is a class member in a legalization class-action lawsuit and as such, was permitted to and did previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act (Act). On September 18, 2001, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On August 10, 2003, the director sent the applicant a Notice of Intent to Deny (NOID). In the NOID the director explained that the evidence submitted by the applicant to establish his entry and employment in the United States was not credible.

The applicant did not submit a response.

On October 14, 2003, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserts that the evidence noted as not credible by the director must be viewed in conjunction with other evidence in the record, and that the applicant has established eligibility by a preponderance of the evidence.

The applicant asserts that he entered the United States in July or August of 1981. The evidence submitted, although not contemporaneous and not primary evidence, generally corroborates the applicant's assertions of his unlawful presence from July 1986, through May 4, 1988. The evidence submitted to establish his unlawful presence prior to July of 1986 is insufficient. Thus, there is a substantial gap in evidence that has been submitted explaining or corroborating the date of the applicant's arrival, allegedly July or August 1981 through July, 1986.

The issue is whether the applicant arrived prior to July 1986.

Relevant to this period in question the record includes the following evidence:

A letter dated June 4, 1990, from [REDACTED] stating that the applicant was employed with August Moon Restaurant as of July 7, 1986, in the position of busboy.

A letter dated March 28, 2003, from [REDACTED] stating that the applicant worked as a busboy at the August Moon Restaurant on Preston Road in Dallas, Texas, from May of 1982 until May of 1986, and as a busboy and eventually manager at the August Moon Restaurant on Central Expressway in Plano, Texas, from June of 1986 through to the present (March 2003).

- A letter dated August 19, 2003, from [REDACTED] stating that he hired [REDACTED] to be the manager at his Plano, Texas, August Moon Restaurant, and that [REDACTED] was certifying the applicant's employment at the Plano restaurant, having nothing to do with the Dallas restaurant.

A letter dated June 4, 1990, from [REDACTED] of C&G Trucking and Garage, stating that the applicant worked for him from October 25, 1981, until June of 1986, restoring trucks and "keeping the place tidy."

- An affidavit dated February 12, 1992, from [REDACTED]. The affidavit states that the applicant lived at [REDACTED] Dallas, TX, from June of 1982 until April of 1983; at [REDACTED] Dallas, TX, from April of 1983 until May of 1986; and at [REDACTED] Plano, TX, from May of 1986 until present (February 12, 1992). The affidavit also states that the applicant and affiant were roommates and lived together at the listed addresses.
- An affidavit dated June 4, 1990, from [REDACTED] stating that he has personal knowledge the applicant lived at [REDACTED] Dallas, TX, from July of 1981 until June of 1982.
- An affidavit date June 4, 1990, from [REDACTED] stating that he has personal knowledge that the applicant resided in "Forth Worth" from July 1981 to the present (June 1990). The affidavit also stated "I certify that I know [applicant], since his come to U.S.A. July 1981 until present time."
- An affidavit dated June 4, 1990, from [REDACTED] stating that she has personal knowledge that the applicant resided in "Fort Worth Texas" from July of 1981 to present (June 1990). The affidavit also states "since July 1981 until present time 1990, I know [applicant], living in U.S.A."

A letter dated June 1, 1990, from [REDACTED] stating that he has known the applicant as living in the United States from January 12, 1981, to present (June 1990).

The director concluded that [REDACTED]'s letter was not credible because it contradicted the testimony of [REDACTED]. In response the applicant submitted the second letter by [REDACTED] in an attempt to reconcile the inconsistency. In that letter [REDACTED] stated that [REDACTED] was referring to the Plano August Moon Restaurant only, and had no knowledge of the applicant's employment at the Dallas restaurant. The AAO will not accept one affiant attempting to construct assertions on behalf of another affiant. The AAO agrees with the director that if [REDACTED] had opened a restaurant in Plano, Texas, hired [REDACTED] as manager, and hired the applicant as a busboy, that [REDACTED] would have had knowledge of the applicant's prior association with both [REDACTED] and the Dallas, Texas August Moon Restaurant. In addition, the applicant, on section 36 of his Form I-687, Employment Since First Entry, makes no reference to the August Moon Restaurant in Dallas, Texas, and only lists the Plano August Moon Restaurant from July of 1986 until present (June 1990). The record contains substantial pay stub receipts for the Plano, Texas, August Moon Restaurant beginning in July of 1986. Therefore both the applicant and [REDACTED] represented that he worked at the Plano August

Moon from June 1986 until 2003. Thus, the director's conclusion that [REDACTED] letters are not credible on this matter is based on the record and will not be disturbed. [REDACTED]

The affidavits of [REDACTED] from June of 1990 and February of 1992 are incongruous. In the June 1990 affidavit [REDACTED] only testifies to one known address of the applicant, and does not mention the basis of their relationship. In the February 1992 memo, [REDACTED] states that he had personal knowledge of three addresses of the applicant, and that they had lived together as roommates. The incongruity in the affidavits reduces their probative value.

The June 1990 affidavit of [REDACTED] lists the same residential address as [REDACTED] claims the same ambiguous address for the applicant as "Fort Worth", and fails to provide any other relevant and verifiable information. The fact that she has listed the same address as a prior affiant raises the question of the nature of her association with the affiant and with the applicant. Without an explanation as to how she came to know the applicant, and whether or not she was a roommate of the applicant, or any other specifically verifiable details, the affidavit is of little probative value.

The affidavit of [REDACTED] states that the applicant has been living in the United States since January 12, 1981, but fails to provide any other verifiable testimony. The affiant does not state how he came to know the applicant, or what the applicant's address was during their acquaintance. The applicant himself has stated that he did not enter the United States until July or August of 1981, thus the affiant's assertion is not plausible. This letter is of no probative value because it is vague and contradicts the applicant's own assertions.

The letter written in 1990 by [REDACTED] of C & G trucking states the applicant worked for him from October of 1981 until June of 1986. While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application that is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits that are considerably lacking in such basic and necessary information.

The letter by [REDACTED] does not list the applicant's residence, nor indicate whether his information was being taken from company records. The applicant has submitted scant contemporaneous evidence, and a bulk of the testimonial evidence submitted by the applicant lacks credibility. The AAO agrees with the director that this one affidavit, lacking verifiable details, is not

enough to carry the applicant's burden in the face of so many inconsistencies in other submitted evidence. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Given the absence of contemporaneous documentation, the failure of the applicant to have clearly explained the facts surrounding his claimed entry prior to January 1, 1982, on all of his applications, and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence for the required period. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The district director noted that no determination had been made as to whether the applicant has demonstrated the required citizenship skills. However, this issue need not be addressed inasmuch as the applicant has not demonstrated that he entered the United States prior to January 1, 1982 and resided continuously since such date.

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