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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: SEATTLE Date: JUL 12 2006
MSC 02 020 61748

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Seattle, Washington, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act.

On appeal, counsel asserts that all of the applicant's evidence "when taken in their entirety [sic] show[s] that he was present during the requisite time period of January 1, 1982 through May 4, 1988." Counsel further asserts, "The service has not established a legitimate reason for denying . . . the application." Counsel submits copies of previously submitted documentation in support of the appeal.

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).

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.

Although Citizenship and Immigration Service (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On his Form I-687, Application for Status as a Temporary Resident, signed on September 4, 1991, and on a sworn affidavit to establish class membership signed on the same date, the applicant stated that he first entered the United States illegally on February 27, 1981 when he crossed the border without inspection at Brownsville,

Texas. The applicant further stated that his only absence from the United States during the qualifying period was from May to June 1987, when he visited Honduras because his mother was ill. The applicant also stated that he was unmarried but had two sons born in Honduras. He indicated that he did not know the dates of their births.

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

1. A November 1, 1990 sworn statement from [REDACTED] in which she stated that she has known the applicant since 1982, and that the applicant lived in her home in the [REDACTED] for four years. The affiant did not indicate when the applicant lived with her and the applicant submitted no evidence to reflect that Ms. [REDACTED] lived at [REDACTED].
2. A November 8, 1990 notarized statement from [REDACTED] in which he [REDACTED] at he worked with the applicant "on and off" from February 1983 through November 1987. Mr [REDACTED] did not indicate where he and the applicant worked.
3. An October 30, 1990 sworn statement from [REDACTED], who stated that she has known the applicant for five and half years after meeting him when she was trying to change a flat tire in the parking lot of a grocery store. The affiant stated that this meeting occurred in Oklahoma, but did not give a particular city and did not provide her address or telephone number.
4. A November 13, 1990 sworn statement from [REDACTED] who stated that the applicant lived in her house at [REDACTED] in Oklahoma City from February 1986 to January 1990. This conflicts with the applicant's statement that he lived at [REDACTED] in Oklahoma City from May 1981 to October 1990. The applicant did not allege that he lived at [REDACTED] and submitted no documentation to establish that the affiant resided at the stated address during the period indicated. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
5. A November 12, 1990 statement from [REDACTED] who stated that he has known the applicant for the past two years as a neighbor.

In response to a Form I-72 dated August 29, 2002, the applicant submitted:

1. Copies of five money order receipts. One appears to bear the date June 19, 1982 and another January 13, 1988. The dates on the remaining three documents are illegible.
2. Copies of receipts for "shared rent" for "[REDACTED]" dated in April and September 1982 and signed by [REDACTED]. The receipts do not indicate a particular street for the rental unit. On the Form I-687, the applicant alleged that he lived at [REDACTED] during 1982. See *Matter of Ho* at 19 I&N Dec. 582, 591-92.
3. A February 9, 1986 letter to [REDACTED] at [REDACTED] in Oklahoma City, inviting him to participate in a soccer game on February 16, 1986. The letter is signed by [REDACTED] the secretary of the Honduras Soccer Sporting Club, but does not contain a return address.

4. A copy of an identification card that the applicant's prior counsel identified as the applicant's membership card in a soccer association in Oklahoma City. The card reflects the date of February 1, 1988 with an expiration date of February 1, 1990, and has the applicant's name and an address of [REDACTED] in Oklahoma City.

With a letter dated May 2, 2003, the applicant also submitted a March 1, 1983 receipt for rent from [REDACTED] for a house. The receipt does not indicate the address for the rental unit.

In a Notice of Intent to Deny (NOID) dated February 6, 2004, the director directed the applicant's attention to the inconsistencies in the record noted above and informed the applicant the affidavits were not credible. The director also noted that the applicant claimed on his Form I-687 that he had two sons but did not know the dates of their birth. The director also informed the applicant that service records reflect that the Border Patrol apprehended him on December 24, 1988. The applicant told the Border Patrol at that time that the attempted entry was his first entry into the United States. The applicant was assigned an identification number of [REDACTED] and the service consolidated the prior record with the current one.

The director also notified the applicant that service records also indicated that he filed a Form I-821, Application for Temporary Protected Status on April 7, 1999 and was assigned identification number [REDACTED] and that the files were consolidated in January 2002. The applicant indicated on his Form I-821 that he entered the United States through El Paso, Texas on February 15, 1982, and that his sons were born in Honduras on September 15, 1980 and January 31, 1984.

The applicant failed to respond to the director's NOID. On appeal, counsel states that supporting affiants are not required to prove their presence in the United States, and that Mr. [REDACTED]'s notarized statement was sufficient to prove that he was present in the United States at the time the letter was notarized. Whether the affiant was present in the United States on the date the document was notarized is not the issue. Mr. [REDACTED] stated that he worked with the applicant from 1983 through 1987. However, at no time does Mr. [REDACTED] state that he and the applicant were employed or worked in the United States. His statement, without more, is not probative of the applicant's residency and continued presence in the United States during the required period.

Regarding the inconsistencies in the affidavits of Ms. [REDACTED] and Ms. [REDACTED], counsel asserts:

The affidavits may contain some inconsistencies that the people writing them are responsible for. The service should not hold it against the applicant because the people who wrote the letter made some errors on the dates and the addresses they used in their letters. The affidavits however do attest to the fact that they knew [the applicant] was present during the requisite time period. Whether or not [the applicant's] living arrangements overlapped during that time period should not be a cause to deny his application.

Immigrants recently transplanted into this country are often transients living for short periods of time in different homes of friends and relatives.

The purpose of supporting affidavits is to corroborate the applicant's claims of residency in the United States, and statements that conflict with the applicant's claims bring into question the credibility of both the affiant and the applicant. The applicant must submit competent objective evidence to resolve these inconsistencies. A simple statement that an error was made will not suffice. 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 visa application. *Matter of Ho*, 19 I&N Dec. at 591-92.

Counsel also asserts that the applicant's Form I-687 was prepared by a notary, and that the applicant should not be penalized for the "poor quality of work done by the notary." However, counsel submitted no documentation to establish that the differences between the Form I-687 and other evidence in the record are errors committed by the notary. *See id.* Further, the applicant signed the form under penalty of perjury, attesting to the truth of the statements contained within it.

On appeal, counsel submits magnified copies of the money order receipts. However, the dates are no more clearly legible than they were before magnification. Counsel also asserts that, by questioning the probity of the rental receipts, the director "erroneously and illegitimately rejected the credibility of the two rental receipts." As the director correctly noted, however, one of the rental receipts reflects a different address than that claimed by the applicant on his Form I-687 and the other contains no address at all.

The applicant submits no evidence on appeal to address the inconsistencies in the record resulting from his prior applications for immigration benefits.

The record also reflects that the Bellevue, Washington Police Department arrested the applicant on November 17, 1994 for a violation of the Uniform Substance Control Act. The charge was dismissed on November 21, 1994.

Given the many unresolved inconsistencies in the applicant's documentation, it is concluded that he has failed to establish continuous residence in the U.S. for the required period and is therefore ineligible for permanent resident status under section 1104 of the LIFE Act.

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