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U.S. Citizenship
and Immigration
Services

LA



FILE:



Office: DALLAS

Date: NOV 09 2006

MSC 02 252 62204

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. All documents have 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, 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 had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In the Notice of Intent to Deny (NOID), the director indicated that the applicant submitted "affidavits from friends and relatives," along with "employment affidavits that are not verifiable" as evidence of residency. In the decision, the director acknowledged that the applicant had submitted correspondence with his mother written during the period of 1984 through 1989, but stated that "there was no explanation as to why [the applicant] failed to show similar evidence from 1981 through 1984."

On appeal, counsel submits additional documents as evidence of the applicant's residence in the United States during the period 1982 through 1984.

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 Services (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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which 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).

As evidence of residency for the period of 1981 through 1984, the applicant has submitted the following evidence:

1. An affidavit dated June 16, 2003 from [REDACTED] a former co-worker at [REDACTED] [REDACTED] stating that beginning in 1981, and prior to being hired as an employee at the company in 1984, the applicant often assisted his brother, [REDACTED] in completing his duties at the company.
2. An affidavit dated June 16, 2003 from [REDACTED] a former co-worker at [REDACTED] stating that beginning in 1982, he saw the applicant regularly at the company and company functions.
3. An affidavit dated May 15, 2002 from the applicant's brother, [REDACTED] stating that the applicant lived at his residence at [REDACTED] from 1981 to 1985.
4. An affidavit dated July 7, 1990 from [REDACTED] stating that he has known the applicant and his brother as friends since before 1980 and listing the applicant's addresses since May 1981.
5. An affidavit dated July 7, 1990 from [REDACTED] stating that he has known the applicant and his family as friends since before 1980 and listing the applicant's addresses since May 1981.
6. Numerous receipts and bills indicating that the applicant's brother resided at [REDACTED]

7. A copy of a Certificate of Award issued to the applicant on May 19, 1984 for completion of an English as a Second Language course at [REDACTED]
8. A patient receipt issued by the [REDACTED] to the applicant on January 2, 1983.
9. A confirmation copy of a telegram dated September 4, 1982 from the applicant's mother addressed to the applicant at [REDACTED], Dallas, Texas.
10. A patient receipt issued to by the Baylor University Medical Center on March 6, 1982 to the applicant at [REDACTED] Dallas, Texas.
11. Various photographs of the applicant and other individuals.

As stated above, the director found the applicant's evidence of residency for the years 1982 through 1984 inadequate. However, the director did not specify any actual deficiencies in the affidavits or other evidence submitted to demonstrate residency during this period. As stated in *Matter of E--M--*, *supra*, the director cannot refuse to consider affidavits, or any form of evidence relating to the 1981-88 period.

Nevertheless, the AAO finds that the submitted evidence is not sufficiently relevant, probative, and credible.

The affidavits of [REDACTED] and [REDACTED] do not contain the address at which the applicant lived during the time of the affiants' acquaintance with him, nor do they attest to more than occasional contact with the applicant during the period of acquaintance. [REDACTED] indicates in his affidavit that he and the applicant have been friends since before 1980, even though the applicant claims not to have entered the United States until the middle of 1981. The telegram that appears to have been sent to applicant in 1982 bears an address that is different than the address at which the applicant claims to have resided in that year. Likewise, the address on the patient receipt from Baylor University Medical Center is also not an exact match with the address at which the applicant claims to have resided in that year. The certificate issued to the applicant in 1984 bears no official markings of the school that allegedly awarded it to the applicant. The photographs submitted cannot be identified with any particular location or date, and are thus of no probative value.

It is incumbent upon the petitioner 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* Here the applicant has failed to offer independent objective evidence that adequately explains and reconciles the inconsistencies in the record. The inconsistencies and omissions in the

record cast doubt on the reliability of the other evidence submitted by the applicant, including the affidavit of [REDACTED]

As the applicant has not submitted sufficient credible evidence of residency, he has not met his burden of proof in showing that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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