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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:

MSC 02 252 60696

Office: DALLAS

Date: SEP 06 2006

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:

SELF-REPRESENTED

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 Interim 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.

On appeal, the applicant states that he did not receive the Notice of Intent to Deny and could not provide additional evidence of residency as a consequence¹. On appeal, the applicant submits copies of documents already on record in the applicant's file.

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).

In the Notice of Intent to Deny, the district director stated that "[t]here is no evidence contained in [the applicant's] file to support [the applicant's] claim of residing in the United States earlier than 1990." The district director denied the application without any further evaluation of evidence of the applicant's residence during the required time period from January 1, 1982 through May 4, 1988.

¹ It is noted that the director sent the Notice of Intent to Deny to the applicant at his address of record.

Contrary to the district director's statement, the record shows that the applicant furnished, in addition to his own testimony on Form I-690, Form I-687 and the Form for Determination of Class Membership in CSS v. Meese or LULAC, the following evidence in an attempt to establish continuous unlawful residence from before January 1, 1982, as claimed:

- (1) An affidavit dated June 1, 1990 from [REDACTED] claiming that she was the applicant's "manager" at [REDACTED] Dallas, Texas from 1983 to 1984.
- (2) An affidavit dated June 7, 1990 from [REDACTED] claiming that she was the applicant's "manager" at [REDACTED] Dallas, Texas from 1985 to 1986.
- (3) An affidavit dated June 19, 1990 from [REDACTED] stating that the affiant was the applicant's employer in Texas from October 1, 1981 through that date.
- (4) An affidavit dated June 27, 1990 from [REDACTED], a friend, attesting to the fact that the applicant resided in Dallas, Texas from August 1981 through that date.
- (5) An affidavit dated July 1, 1990 from [REDACTED] a friend, attesting to the fact that the applicant resided at [REDACTED] Dallas, Texas from January 1981 through that date.
- (6) An affidavit dated April 17, 2002 from [REDACTED] stating that the applicant had been living at her residence, [REDACTED] Dallas, Texas from January 1981 through that date.

The *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989) provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I-94), (2) his passport, (3) affidavits from third party individuals, and (4) an affidavit explaining why additional original documentation was unavailable.

In this case, the applicant has submitted only third party affidavits. He has not submitted any contemporaneous documentation to establish presence in the United States from the time he claimed to have commenced residing in the U.S. through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises questions regarding the credibility of the claim. However, the lack of contemporaneous documentation would not be fatal to the applicant's claim, if the affidavits upon which the claim relies were consistent both internally and with the other evidence of record.

In this case, the affidavits submitted by the applicant are not consistent with each other or with other evidence in the record. On line 33 of Form I-687, signed on June 30, 1990, the applicant lists his residences in the United States as follows:

- From January 1983 to December 1984: [REDACTED], Dallas, Texas
- From January 1985 to December 1986: [REDACTED] Dallas, Texas
- From January 1987 to June 1990: [REDACTED] Dallas, Texas

Though the applicant lists [REDACTED] Dallas, Texas as his current address on line 6 of Form I-687, this address is not listed on line 33. Not only does the applicant fail to list his residence from January 1981—the date he claims to have entered the United States—through January 1983, but the information in his application is contradicted by the affidavits listed above. While the attestations in the affidavits of [REDACTED] and [REDACTED] are generally consistent with information in the application, [REDACTED] states in her affidavit that the applicant lived at [REDACTED] from January 1981 through July 1990. Furthermore, the affidavit of [REDACTED] states that the applicant had been living at “[her] residence” of [REDACTED] from January 1981 through April 2002.

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). In this case the applicant has made no effort to resolve the inconsistencies present in the evidence he submitted.

The AAO finds that the district director erred in not considering the evidence of residency submitted by the applicant. However, due to the applicant’s failure to submit contemporaneous evidence of residency, coupled with the inconsistencies in and between the affidavits and other evidence submitted by the applicant, the AAO finds that the applicant is not credible, and has therefore not met his burden of proof in showing that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not 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.