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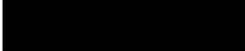


U.S. Citizenship  
and Immigration  
Services

L2



FILE:



Office: DALLAS

Date:

SEP 21 2006

MSC 02 250 61615

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. Any further inquiry must be made to that office.

  
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 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.

On appeal, counsel states that the director failed to “properly define ‘preponderance of the evidence,’ has failed to ‘conduct an examination of each piece of relevant evidence, and has failed to ‘challenge the credibility of the applicant or the authenticity of the documents’ with specific reasoning.” Counsel submits a brief and copies of previously submitted documentation.

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. Section 1104(c)(2)(B) of the LIFE Act; 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).

The applicant stated on a questionnaire to determine class membership, which he signed under penalty of perjury on June 13, 1990, that he first entered the United States without inspection in March 1981. In an interview on July 19, 1993, the applicant stated that he entered the United States “around” August 10, 1981. On a Form I-765, Application for Employment Authorization, which he signed under penalty of perjury, the applicant stated that he last entered the United States on October 15, 1981. On two Forms I-687, Application

for Status as a Temporary Resident, which he signed under penalty of perjury on June 13, 1990 and July 4, 1993, the applicant stated that his only absence after 1982 was from June 30, 1988 to August 13, 1988, when he was deported. However, on both of his questionnaires, the applicant claimed to have left the United States in June 1987 with a return in August 1987. During his July 1993 interview, the applicant claimed that the Border Patrol returned him to Mexico in June 1983 and again in August 1988. The applicant's conflicting statements regarding his initial entry and absences from the United States bring his credibility into question. 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).

Further, on his June 13, 1990 Form I-687 application, the applicant stated that he worked for "general contractors" doing "yard work" from March 4, 1981 to June 1984. On his July 4, 1993 Form I-687 application, the applicant did not admit to any employment prior to October 5, 1984. The applicant claimed no employment on either application from September 1987 until September 1988.

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 May 27, 2002 sworn statement from [REDACTED] in which he stated that he has known the applicant since September 1980. Mr. [REDACTED] did not indicate that the applicant resided in the United States during the required period.
2. A June 5, 1990 sworn statement from [REDACTED] in which he stated that the applicant lived with him from March 1981 to June 1984 at 12708 Schroeder Apt. 207 in Dallas, Texas. The applicant submitted no evidence to reflect that either he or Mr. [REDACTED] lived at this address during the stated time frame.
3. A May 26, 2002 sworn statement from [REDACTED] in which he stated that he is in the carpet installation business, and that the applicant worked for him as a subcontractor from December 20, 1981 to March 20, 1986. The applicant did not indicate on either of his two Forms I-687 that he worked for Mr. [REDACTED]. Further, this letter conflicts with the applicant's statement that he performed yard work from March 1981 to June 1984. The applicant submitted no evidence to explain or resolve this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-92. In a May 14, 2003 sworn letter, Mr. [REDACTED] stated that the applicant worked an average of 40 hours per week, and that, although the company did not maintain records, he "remembers from personal knowledge" the information that he provided. Attempts by the district office to contact Mr. [REDACTED] were unsuccessful, as were attempts to locate the business in a business directory (smartpages.com). Mr. [REDACTED] statement also conflicts with that of Mr. [REDACTED], who stated that the applicant worked for him on a full-time basis from October 1984 to March 1986.
4. A June 5, 1990 sworn statement from [REDACTED] in which he stated that the applicant worked for him as a carpet layer (helper) from October 1984 to March 1986. In a May 14, 2003 sworn statement, Mr. [REDACTED] stated that the applicant worked an average of 40 hours per week. He further stated that records for that period were "non-existent," but that he is willing to swear to the information that he provided. Mr. [REDACTED] did not indicate the source upon which he relied in dating the applicant's employment. The information also conflicts with that of Mr. [REDACTED] who stated that the applicant worked for him on a full-time basis from 1981 to March 1986. *Id.*

5. A May 11, 2002 sworn statement from [REDACTED] in which he stated that the applicant had worked with him from March 3, 1981 until June 1984. Mr. [REDACTED] did not indicate where he worked with the applicant.
6. A June 18, 1990 letter from [REDACTED] of [REDACTED] "introducing" the applicant. Mr. [REDACTED] stated that he has known the applicant since April 1984; however, the letter does not indicate the nature of the relationship between Mr. [REDACTED] and the applicant or that the applicant was present and residing in the United States during the requisite period.
7. A June 5, 1990 sworn statement from [REDACTED], a human resource specialist with the [REDACTED] Ms. [REDACTED] stated that [REDACTED] was employed with the [REDACTED] from March 14, 1986 until March 22, 1987. The applicant listed [REDACTED] as one of his aliases; however, Ms. [REDACTED] did not indicate that she knew the applicant as "[REDACTED]." Further, the applicant provided no evidence that he was also known as [REDACTED]. The applicant also submitted pay stubs from the [REDACTED] for periods in 1986 and 1987. The pay stubs do not identify the applicant by name; however, the social security number listed is one identified by the applicant as one that he had used.
8. A copy of a February 17, 2003 letter from [REDACTED] Director of Human Resources for the [REDACTED] and Resorts, verifying that the applicant worked for the hotel in 1987. Ms. [REDACTED] stated that the company's records only dated from five years back, but that the applicant provided her with a "valid" pay stub for the period May 7, 1987.
9. A June 16, 1990 letter from [REDACTED] personnel manager for The [REDACTED] in which she stated that [REDACTED] worked for the hotel from March 30, 1987 to September 1, 1987. The applicant also submitted pay stubs from the [REDACTED] for [REDACTED] for periods in 1987.
10. A copy of an undated statement from the [REDACTED] indicating that the applicant worked for the hotel from February 7, 1988 until April 16, 1988. The letter does not indicate that the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). However, the applicant submitted pay stubs from the [REDACTED] Suites for periods during the qualifying period in 1988.

The applicant submitted no independent or objective evidence that reflects that he was also known and/or employed under the various aliases that he claimed. Additionally, we note that on the Form I-687 application that he signed on June 13, 1990, the applicant claimed that he lived at [REDACTED] in Dallas, Texas from October 1984 until March 1986, and at [REDACTED] in Dallas from April 1986 until November 1989. On the Form I-687 application that he signed on July 4, 1993, the applicant claimed that he lived at [REDACTED] in Dallas from June 1, 1984 to November 1, 1990. Additionally, on the Form G-325, Biographic Information, that he signed under penalty of perjury on May 10, 2002, the applicant claimed that he lived at [REDACTED] in Dallas from April 1986 until June 1990. The applicant submitted no independent objective evidence to explain these inconsistencies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Given the contradictions and unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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