



U.S. Citizenship
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FILE:

MSC 02 179 61385

Office: HOUSTON

Date:

APR 10 2007

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, Houston, 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, counsel asserts that the applicant has submitted sufficient evidence of physical presence and should not have been denied.

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 applicant 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 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.

Although the 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. *See* 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not relevant, probative, and credible.

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

- A letter dated February 20, 2003 from [REDACTED], Plant Manager at Sunshine Mirror in Ft. Pierce, Florida, stating that he has known the applicant since 1982 when he worked with him at Chromalloy Mirror. [REDACTED] states that he "went to Texas Mirror with [the applicant] in 1985." He also indicates that the applicant has been an employee of Sunshine Mirror, but does not provide the dates of employment.
- A letter dated February 10, 2003 from [REDACTED], former Plant Manager at Texas Mirror, stating that the applicant worked under his supervision at the company's factory from November 1984 to May 1988.
- An affidavit notarized on April 27, 1990 from [REDACTED] of Chromolloy Mirror Division of Houston, Texas stating that the applicant worked at the company under his supervision from 1981 until the company went out of business in 1985.

- An affidavit notarized on April 27, 1990 from [REDACTED] of Texas Mirrors of Huntsville, Texas stating that the applicant worked under his supervision at the company from 1985 to July 1988.
- An affidavit notarized on May 18, 1990 from [REDACTED] of Houston, Texas stating that she met and has known the applicant since May 1981 when he was residing at [REDACTED] in Houston, Texas.
- An affidavit notarized on February 20, 1990 from [REDACTED], owner of residence at [REDACTED] in Houston, Texas stating that she rented the same to the applicant from November 1981 to May 1985.
- Letters postmarked in 1983 and 1984 addressed to and from the applicant at [REDACTED] in Houston, Texas (two of the envelopes bear the number [REDACTED] rather than [REDACTED]).

On October 7, 2004, the director issued a Notice of Intent to Deny (NOID) indicating that the application would be denied because of “notable inconsistencies and contradictions in [the applicant’s] verbal testimony and the testimony contained in the record.” In particular, the director observed that, during an interview on October 4, 2004, the applicant testified that he did not leave the United States after his initial entry in November 1981 until December 2002, which contradicted representations by the applicant in his I-687, Application for Status as a Temporary Resident, that he was absent from the United States on three occasions during this same period.

In response to the NOID, counsel submitted an affidavit from the applicant in which the applicant conceded that he “didn’t correctly answer the question regarding . . . absences from the United States,” but stated that this error was the result of “extreme emotional duress” caused by the then recent discovery that his wife had a “tumor” and by being interviewed without his attorney present, rather than by any intention to withhold information concerning his departures from the United States.

In the decision to deny the application dated January 12, 2005, the director acknowledged the applicant’s response, but stated that the applicant’s “credibility has not been established” and denied the application “based on the findings” in the NOID.

On appeal, counsel asserts that the applicant has submitted sufficient evidence of physical presence and should not have been denied.

After reviewing all the evidence in the record, the AAO determines that the evidence of residency is not relevant, probative, and credible.

The record contains notes from the applicant’s interview that support the director’s finding that the applicant presented inconsistent testimony at his interview on October 4, 2004. The applicant has not

disputed that he testified in an inconsistent manner. His claim that the error in his testimony was the result of extreme emotional duress caused by his wife being diagnosed with a tumor and the applicant not knowing "what [would] become of her" or their children is not supported by other evidence submitted by the applicant. The applicant submitted a letter dated October 29, 2004 from [REDACTED] stating only that the applicant's wife had a diagnosis of "Hyperlipidemia and mild Degenerative Disc disease of the central lumbar area," conditions that were "being well controlled with medication."

In addition to the inconsistency noted by the director, there are other significant discrepancies and insufficiencies in the evidence of residency submitted by the applicant. Specifically:

- The applicant submitted three affidavits from [REDACTED]. Each affidavit is on the letterhead of a different company, and [REDACTED] attests that the applicant has been employed by each of these companies. In the affidavit on the letterhead from Chromolloy Mirror Division, notarized on April 27, 1990, [REDACTED] states that the applicant was employed at the company under his supervision until the company "went out of business" in 1985, but [REDACTED] does not explain how he is able to submit a letter on the company's letterhead five years later in 1990. In the affidavit on Sunshine Mirror letterhead, [REDACTED] indicates that he "went" to Texas Mirror with the applicant in 1985, but the Texas Mirror letterhead bears the same address as [REDACTED]'s residential address. This address is also the residential address listed by the applicant for the time period from May 1985 to July 1988 on his Form I-687. Also, in the affidavit on Sunshine Mirror letterhead, [REDACTED] indicates that he started working with the applicant at "Chromalloy Mirror" in 1982, which is inconsistent with his representation in the Chromolloy Mirror affidavit that the applicant began working at that company in 1981. These discrepancies raise doubts as to the existence of these companies; [REDACTED]'s employment and role, if any, at these companies; and the truthfulness of [REDACTED]'s representations concerning the applicant's employment at these companies. Furthermore, the affidavits do not contain the applicant's address at the time of employment, his duties with the companies, whether or not the information in the affidavits was taken from official company records, where these records are located and whether USCIS may have access to the records. The applicant's social security statement reveals no employment prior to 1989.
- [REDACTED] states in her affidavit that the applicant resided at [REDACTED] in Houston, Texas when she met him in May 1981, but the applicant has consistently claimed that he first entered the United States in November 1981.
- In his letter dated February 10, 2003, [REDACTED] indicates that the applicant worked under his supervision at Texas Mirror from November 1984 to May 1988, rather than from July 1985 to July 1988 as indicated on the applicant's Form I-687 and in the affidavit from [REDACTED].

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies

in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has submitted inconsistent evidence of residency. It is reasonable to expect him to explain why he has submitted contradictory information and adequately resolve the contradictions through credible evidence. It is reasonable to expect the applicant to submit explanations from affiants providing testimony that contradicts other evidence submitted by the applicant. The applicant has failed to present sufficient credible evidence to adequately address the discrepancies noted herein. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to prove continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the inconsistency and insufficiency of the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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