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APR 10 2007

FILE: [REDACTED]  
MSC 02 186 63097

Office: LOS ANGELES

Date:

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 District Director, Los Angeles, 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 asserts that he has submitted sufficient evidence to establish his continuous residence.

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 through May 4, 1988. 8 C.F.R. § 245a.11(b).

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceed one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.15(c)(1).

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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 sufficiently 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:

- An employment verification letter dated May 20, 2004 from [REDACTED] stating that the applicant was his employee at [REDACTED] from 1982 to 1995.

- An affidavit notarized on May 19, 2004 from [REDACTED] stating that she has known the applicant in California since 1985.
- An affidavit notarized on June 30, 2003 from [REDACTED] stating that he has known the applicant since 1981 when they were co-workers at [REDACTED]
- An affidavit notarized on November 13, 1990 from [REDACTED] stating that he is the applicant's friend and knows that the applicant has lived in Los Angeles in March 1983.
- An affidavit notarized on October 31, 1990 from [REDACTED] stating that he is the applicant's friend and knows that the applicant has lived in Los Angeles since August 1985.
- An affidavit notarized on October 24, 1990 from [REDACTED] stating that he had known the applicant as friend in Los Angeles since October 1981.
- An undated employment verification letter from [REDACTED] owner of [REDACTED] Sewing Contractor of Huntington Park, California stating that the applicant worked as a sewing machine operator for the company from September 1981 to December 1985.
- An undated letter from [REDACTED] z stating that the applicant rented the property at [REDACTED] [REDACTED] in South Gate, California from June 30, 1981 to July 30, 1985.
- An undated letter from [REDACTED], President of General Service in Huntington Park, California stating that the applicant was employed as a carpet cleaner at the company from February 1986 to March 1990.

On May 10, 2004, the director issued a Notice of Intent to Deny (NOID) finding that the affidavits submitted by the applicant did not "contain sufficient information and/or corroborative documents."

In response to the NOID, the applicant submitted additional affidavits.

In a decision to deny the application dated December 28, 2004, the director noted that the affidavits submitted by the applicant in response to the NOID attested to employment not included in the applicant's employment history as found in the applicant's Form I-687, Application for Status as a Temporary Resident. The director stated that the information submitted by the applicant "failed to overcome the grounds for denial as stated in the NOID" and denied the application.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish continuous residence.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The applicant has failed to address the inconsistency pointed out by the director in the decision. The letter from [REDACTED] indicates that the applicant was an employee at [REDACTED] from 1982 to 1995 and the affidavit from [REDACTED] indicates that the applicant was an employee of [REDACTED] beginning in 1981. There is no mention of this employment in the applicant's Form I-687, which lists other employers for the qualifying period. Furthermore, neither the letters from the employers listed on the Form I-687, General Service and [REDACTED] Sewing Contractor, include the applicant's address at the time of employment or state whether or not the information in the letters was taken from official company records, where such records are located and whether the USCIS may have access to the records.

The other evidence of residency submitted by the applicant lacks essential detail. The affidavit from [REDACTED], in which he attests to renting a property to the applicant from 1981 to 1985, does not include any contact information for the affiant and is thus not amenable to verification. The affidavits from the applicant's friends fail to list the applicant's addresses and to provide sufficient details to establish the basis for their personal knowledge that the applicant resided continuously in the United States for the qualifying period.

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 conflicting statements as to his employment in the United States. It is reasonable to expect him to resolve the contradictions through explanations from the affiants providing the contradicting testimony and through other credible evidence. The applicant has failed to present sufficient credible evidence of residency 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 continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

It is also noted that the applicant filed a Form I-687 on September 1, 2004 seeking legalization pursuant to the CSS/Newman settlement under 8 U.S.C. § 1255a. After reviewing the applicant's Class Membership Worksheet, the director determined that the applicant had failed to establish that it is more probable than not that the applicant meets the class definition, and denied the application.

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the contradictions and insufficiencies in 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.