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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 218 60764

Office: HOUSTON

Date:

APR 25 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:

PUBLIC COPY

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 first entered the United States before January 1, 1982 and 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 affidavits submitted by the applicant are sufficient to establish continuous residence by a preponderance of the evidence and the director erred in summarily rejecting this evidence.

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 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 affidavit notarized on January 13, 2005 from [REDACTED] of Houston, Texas, stating that he has known the applicant since 1982 when he employed the applicant at [REDACTED] to load and unload a produce truck from February to August of that year, work that the applicant also performed for Mr. [REDACTED] occasionally thereafter.
- An affidavit notarized on January 13, 2005 from [REDACTED] of Houston, Texas stating that he has known the applicant as a friend since 1982 when he visited Houston from Chicago

and loaned the applicant money. Mr. [REDACTED] states that he has kept in touch with the applicant since that time and visited the applicant occasionally after later moving to Houston.

- A statement dated January 12, 2005 from [REDACTED] of Houston, Texas stating that he has known the applicant since 1982 when the applicant assisted him in unloading his produce truck at Produce Truck, where Mr. [REDACTED] still sees the applicant occasionally. Mr. [REDACTED] also states that he hired the applicant to paint his house in October 1982.
- An affidavit notarized on December 13, 2004 from [REDACTED] owner of [REDACTED] in Houston, Texas, stating that he has known the applicant as a customer and friend since 1982.
- An affidavit notarized on December 13, 2004 from [REDACTED] President of the [REDACTED] of Greater Houston, stating that he has known the applicant since 1982.
- A letter dated December 8, 2004 from [REDACTED] Lead Minister at the [REDACTED] in Houston, Texas, stating that the applicant has been attending and volunteering at the Center since 1982-83.
- An affidavit notarized on May 11, 2003 from [REDACTED] of Sugarland, Texas stating that he as known the applicant since 1981.
- An affidavit notarized on May 10, 2003 from [REDACTED] of Webster, Texas stating that he has known the applicant since December 1981 when the applicant was living at [REDACTED] Rd.
- An affidavit notarized on May 10, 2003 from [REDACTED] stating that he knows the applicant.
- An affidavit notarized on May 9, 2003 from [REDACTED] stating that he first met the applicant in 1981 when the applicant worked at [REDACTED] and resided at [REDACTED], Texas.

On November 19, 2004, the director issued a Notice of Intent to Deny (NOID) finding that the evidence submitted by the applicant, consisting of "uniform affidavits, and no primary evidence," failed to establish that the applicant first entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

In response to the NOID, counsel submitted the third-party affidavits from [REDACTED]

In a decision to deny the application dated February 23, 2005, the director acknowledged the affidavits submitted by the applicant, but stated that the "information received does not establish [the applicant's] credibility or provide sufficient evidence to rebut the [NOID]." The director denied the application based on the findings in the NOID.

On appeal, counsel contends that the director erred in denying the application because the applicant failed to provide "primary evidence" other than affidavits. Counsel asserts that the regulations allow the applicant to establish continuous residency through "statements or other relevant documents." Counsel points out that the director rejected the evidence submitted by the applicant without challenging "either the credibility of the applicant, the affiants, or the authenticity of the documents." Counsel contends that the director's conclusion that the applicant failed to provide sufficient evidence is based on an erroneous interpretation of the law and the precedent decision *Matter of E-M-*, and constitutes a violation of due process. Counsel asserts that if the evidence submitted by the applicant had been given proper consideration and weight, the director would have found that the applicant had met his burden of proof.

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. Specifically:

- The affidavits from [REDACTED] indicate that the applicant performed continuous work for the affiants at "[REDACTED]" in 1982, and occasionally thereafter, but do not provide an address or addresses for the applicant during the period of employment. The applicant does not specifically list this employment on his Form I-687, Application for Status as a Temporary Resident, indicating only that he worked "odd jobs" from November 1981 to May 1984. These affidavits suggest that the affiants had, at most, only occasional contact with the applicant subsequent to 1982, and thus are of minimal or no probative value in showing that the applicant resided continuously in the United States subsequent to that year.
- [REDACTED] attests to "keeping in touch" with the applicant after their first meeting in February 1982, but states that he only saw the applicant occasionally after he later moved to Houston himself. Mr. [REDACTED] does not give the date on which he moved to Houston, making it impossible to ascertain if he has firsthand knowledge that the applicant resided in the United States during the qualifying period other than at the time of their initial meeting in February 1982.
- [REDACTED] states in his affidavit that he has known the applicant since 1981, but also states that when he first met the applicant, the applicant was employed by [REDACTED]. Mr. [REDACTED] lists the year "1984" in parenthesis next to the name of the applicant's employer. The applicant lists the year 1984 as the year he began working for Large Star Maintenance on his Form I-687. Mr. [REDACTED] does not state that he has personal knowledge that the applicant resided in the United States subsequent to their initial contact, and he has presented conflicting statements as to when this initial contact occurred. Furthermore, Mr. [REDACTED] provides no details concerning the

nature of his acquaintance with the applicant or the basis of his knowledge that the applicant has resided in the United States.

- [REDACTED] states in his affidavit that he has personally known the applicant since December 1981 when the applicant was residing at [REDACTED] but does not state that he has personal knowledge that the applicant resided in the United States subsequent to this initial contact. Mr. [REDACTED] provides no details concerning the nature of his acquaintance with the applicant or the basis of his knowledge that the applicant has resided in the United States at the address listed.
- [REDACTED] states in his affidavit that he has personally known the applicant since 1981, but does not state that he has personal knowledge that the applicant resided in the United States during the qualifying period.
- [REDACTED] does not list the date on which he met the applicant or the applicant's address, and attests only that the applicant is an honest and hard working individual.
- [REDACTED] states in his affidavit that he has known the applicant since 1982, but does not attest that the applicant has resided continuously in the United States since that time. Mr. [REDACTED] does not indicate the nature of his acquaintance with the applicant or provide sufficient details from which it may be inferred that he has personal knowledge of the applicant's residency in the United States.
- [REDACTED] states in his affidavit that he has known the applicant as a friend and "regular" customer of [REDACTED] since 1982, but does not list the applicant's address or addresses and fails to indicate the frequency of the applicant's visits to his business from which it may be inferred that the applicant resided *continuously* in the United States for the qualifying period.
- [REDACTED] states that the applicant has been coming regularly to the [REDACTED] since "1982-83", but fails to provide more details as to the frequency of the applicant's visits or his activities at the Center. Mr. [REDACTED] does not provide the applicant's address or addresses during the time of the applicant's activity at the Center and provides scant details concerning the nature of his acquaintance with the applicant and the basis of his knowledge that the applicant has been attending the Center since 1982.

As discussed above, the affidavits submitted by the applicant provide insufficient detail concerning the nature of the affiants' acquaintance with the applicant and the basis for the assertions made by the affiants concerning the applicant's residency in the United States. All of these affidavits fall short of meeting the evidentiary guidelines set forth in 8 C.F.R. § 245a.2(d)(3). On his Form I-687, the applicant lists two residences and three specific employers for the period of January 1, 1982 to May 4, 1988. However, the applicant has not submitted affidavits from any individuals—such as the employers listed on the Form I-687 or former landlords and neighbors—that attest, or that have a

credible basis to attest, that the applicant resided at these addresses and worked for these employers. The affidavits submitted by the applicant simply do not contain attestations that the applicant continuously resided in the United States from before January 1, 1982 to May 4, 1988, and they lack sufficient information from which continuous residency can be inferred.

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 insufficiency in the evidence discussed herein, 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.