



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

MSC 02 155 63719

Office: Houston

Date: APR 26 2007

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel contends that the applicant had submitted sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel includes copies of previously submitted documentation in support of the appeal.

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. *See* § 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. *See* 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on April 18, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Houston, Texas from December 5, 1987 to March 5, 1989, [REDACTED] in Houston, Texas from March 5, 1989 to September 16, 1990, and [REDACTED] in Houston, Texas from September 17, 1990 through the date the Form I-687 application was executed on April 4, 1991. Although the applicant claimed to have entered this country on December 19, 1981 at part #16 of the Form I-687 application and listed employment beginning September 11, 1983 at part #36 of the Form I-687 application, the fact that he failed to list any address(es) of residence in the United States before December 5, 1987 seriously impairs the credibility of his claim of residence in this country since prior to January 1, 1982.

The applicant included a "Form for Determination of Class Membership in *CSS v. Meese*" that is dated April 15, 1991 in which he testified that he departed the United States by airplane on September 16, 1987 because his son was very sick. The applicant claimed that he visited Pakistan and Canada during the course of his absence and he reentered this country by car on October 23, 1987. The applicant submitted another separate "Form for Determination of Class Membership in *CSS v. Meese*" that is dated April 18, 1991 in which he testified that he departed the United States by truck on September 16, 1987 "to visit friends in Canada." The applicant listed Canada as the only country he visited during this absence and claimed that he reentered the United States by truck on October 23, 1987. The applicant failed to provide any explanation for his contradictory testimony relating to the purpose of his trip, his method of departure from and return to this country, and the countries he visited during his absence.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an employment letter that is signed by [REDACTED] and dated May 23, 1987. Mr. [REDACTED] stated that he had employed the applicant at his construction company for the past

two years. However, Mr. [REDACTED] failed to provide any testimony that the applicant resided in the United States since prior to January 1, 1982 to that date the applicant began working for his construction company in 1985.

The applicant provided an employment letter that appears to have been signed by [REDACTED]" and is dated July 7, 1989. Mr. [REDACTED] declared that the applicant worked for him at his septic tank cleaning business for eighteen months during an unspecified period in Conroe, Texas. While Mr. [REDACTED] testimony matched the applicant's claim that he had been employed as cleaner in Conroe, Texas from September 11, 1983 to March 7, 1985 at part #36 of the Form I-687 application, Mr. [REDACTED] failed to provide any testimony that would tend to corroborate the applicant's claim of residence in this country in those periods from prior to January 1, 1982 through September 10, 1983 and after March 8, 1985 to May 4, 1988.

The applicant submitted three affidavits that are all dated January 11, 1990 and signed by [REDACTED] and [REDACTED], respectively. All three affiants declared that the applicant resided at [REDACTED] in Houston, Texas as of the date the affidavits were executed on January 11, 1990. Each of the three affiants stated that he or she was a friend of the applicant but failed to offer any testimony regarding his continuous residence in the United States during the requisite period. Further, the testimony of these three affiants that the applicant was residing at [REDACTED] in Houston, Texas as of January 11, 1990 directly conflicted with the applicant's testimony that he began residing at [REDACTED] in Houston, Texas on September 17, 1990 at part #33 of the Form I-687 application.

The applicant included a letter containing the letterhead of [REDACTED] Inc., the owner of [REDACTED] apartments in Houston, Texas. The letter is signed by [REDACTED] who listed his position as manager. Mr. [REDACTED] stated that the applicant and his family lived in apartment #314 of this apartment complex from February 2, 1987 to March 5, 1989. Although the applicant listed this address a residence for a portion of this same period at part #33 of the Form I-687, he testified that he began to reside at this address on December 5, 1987 rather than February 2, 1987 as Mr. [REDACTED] asserted. No explanation was offered to reconcile this discrepancy in testimony.

The record contains another separate Form I-687 application dated April 2, 2001. At part #33 of the Form I-687 application dated April 2, 2001 where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Houston, Texas from February 6, 1982 to July 15, 1985 and [REDACTED] in Houston, Texas from September 4, 1988 to February 14, 1992. The fact that the applicant failed to list any address(es) of residence in the United States in that period from July 16, 1985 to September 3, 1988 only served to further diminish the credibility of his claim of residence in this country since prior to January 1, 1982. Additionally, the applicant's listing of his addresses of residence in this country at part #33 of the Form I-687 application dated April 2, 2001 does not match his listing of his addresses of residence at part #33 of the Form I-687 application dated April 4, 1991.

Subsequently, on March 4, 2002, the applicant submitted his Form I-485 LIFE Act application. In support of his claim of residence in this country for the requisite period, the applicant provided an affidavit that is signed by [REDACTED] Mr. [REDACTED] stated that he had lived in the United States for the past thirty years and had known the applicant since 1984. While Mr. [REDACTED] attested to the applicant's residence in this country since 1984, he failed to provide any specific and verifiable testimony that would tend to corroborate the applicant's claim of residence in the United States after 1984. In addition, Mr. [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up until 1984.

On November 15, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient credible evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. Specifically, the district director noted that documentation submitted by the applicant in support of his claim of residence for the requisite period did not include testimony for that period from prior to January 1, 1982 up to 1984 and lacked direct verifiable testimony for that period after 1984 through to May 4, 1988. The district director further determined that the applicant himself had offered contradictory testimony relating the purpose for his absence from this country in 1987, his method of departure from and return to this country during this trip, and the countries he visited during his absence. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which he asserted that the applicant had provided only one "Form for Determination of Class Membership in CSS v. Meese" dated April 15, 1991 in which he testified that he departed the United States by airplane on September 16, 1987 because his son was very sick and that he visited Pakistan and Canada during the course of his absence and that he reentered this country by car on October 23, 1987. Counsel contended that the applicant subsequently offered consistent testimony at his interview on May 5, 2004 and the record must contain documentation relating to an individual other than the applicant. Counsel included a copy of the determination form dated April 15, 1991, as well as copies of other previously submitted documentation with the response. While counsel is correct in declaring that the "Form for Determination of Class Membership in CSS v. Meese" dated April 15, 1991 was the only determination form included with the Form I-485 application, the record shows that the applicant also included another separate "Form for Determination of Class Membership in CSS v. Meese" dated April 18, 1991 with the Form I-687 application that was previously filed on the same date. In the determination form dated April 18, 1991, the applicant testified that he departed the United States by truck on September 16, 1987 "to visit friends in Canada," and that he reentered the United States by truck on October 23, 1987.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N

Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on December 28, 2004.

On appeal, counsel contends that the applicant had submitted sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel reiterates his claim that the determination form dated April 18, 1991 belonged to an individual other than the applicant. Counsel includes copies of previously submitted documentation in support of the appeal. However, a review of the record shows that the applicant included two signed determination forms, one dated April 15, 1991 the other dated April 18, 1991, with the filing of the Form I-687 application on April 18, 1991. The fact that the applicant offered contradictory testimony in two separate determination forms regarding the purpose of his trip, his method of departure from and return to this country, and the countries he visited during his absence in two documents executed within three days of each other seriously undermines his credibility.

Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support his claim of continuous residence in this country for the requisite period have been considered. However, the applicant failed to submit any evidence in support of his claim of residence in this country from prior to January 1, 1982 up until 1984. Further, the evidence submitted by the applicant relating to his residence in the United States from 1984 to May 4, 1988 lacks sufficient detail, contains little verifiable information, and is contradictory to the substance of the applicant's own testimony regarding his residence in this country for the requisite period. Although counsel contends that no attempt has been made to verify the content of testimony contained in the supporting documentation, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of the applicant's evidence of residence. Moreover, the applicant himself has provided contradictory testimony relating to his addresses of residence in this country and the circumstances surrounding his admitted absence from the United States in 1987.

The absence of sufficiently detailed supporting documentation and the existence of contradictory testimony seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal or no probative value and his own contradictory testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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