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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] MSC 02 150 61966

Office: CHICAGO

Date: DEC 12 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. 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, Chicago, Illinois, 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 asserts that the director incorrectly applied the wrong standard in evaluating the applicant's evidence and that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel submits a brief and additional 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. 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 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 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).

On a form to determine class membership, which he signed under penalty of perjury, on August 7, 1997, the applicant stated that he first arrived in the United States in 1981. However, the applicant's Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on August 7, 1997, is without detail. In Block 33, where the applicant is asked to list all residences since his first entry into the United States, the applicant listed his current address but did not state when he began

living there. In block 36, where the applicant is asked to list all employment in the United States since first entry, the applicant stated that he worked for Kautt & Bux Manufacturing in Mundelein, Illinois. However, the applicant did not state the dates of his employment. The applicant did not list any associations or affiliations in block 34.

In a supplemental unsigned and undated statement, the applicant stated that he lived at the following locations:

March 1980 to March 1981
April 1981 to March 1985
May 1985 to September 1986
October 1986 to November 1987
December 1987 to August 1990

We note that, although the applicant claimed to have lived in Oceanside, California from March 1980, he stated on his form to determine class membership that he did not arrive in the United States until 1981. We note also that the dates that the applicant claimed to have lived in Arizona and in Waukegan were changed. The original dates, as also reflected on the applicant's Form G-325A, Biographic Information, which he signed under penalty of perjury on January 15, 2002, indicated that the applicant lived in Arizona from May to December 1985 and in Waukegan from December 1985 to November 1987. In an April 27, 2004 statement, the applicant again indicated that he lived in Arizona until September 1986 before moving to Waukegan in October 1986. However, 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). The applicant submitted no documentary evidence to explain these inconsistencies.

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 January 19, 2001 sworn letter signed by the applicant and [REDACTED] in which Mr. [REDACTED] certified that he employed the applicant to pick strawberries from April 1981 to March 1985. Mr. [REDACTED] stated that the applicant lived with him in his home at [REDACTED] in Santa Maria, California during that time. Mr. [REDACTED] did not indicate whether or not the information about the applicant's employment was taken from company records, as required by 8 C.F.R. § 245a.2(d)(3)(i). In a June 12, 2003 sworn declaration, Mr. [REDACTED] who stated that he lived in Waukegan, Illinois, and was employed by a landscaping company, stated that the applicant lived and worked with him in Santa Maria from March 1981 to September 1985. Mr. [REDACTED] stated that he had a contract to pick strawberries and employed the applicant based on his prior experience as an agricultural worker in the United States. Mr. [REDACTED] again failed to state whether the information regarding the applicant's employment was taken from company records. Further, Mr. [REDACTED] statements are inconsistent with each other and undermine his credibility in establishing the applicant's employment dates. As proof that Mr. [REDACTED] was engaged in agricultural work, the applicant submitted a copy of a contract with Mr. [REDACTED] name. However, the contract does not contain the name of an employing firm, is not signed by a representative of the contracting firm, and is dated October 21, 1987. Accordingly, the document has no evidentiary value.

2. Affidavits from [REDACTED], [REDACTED], and [REDACTED] who all affirmed that he had known the applicant for "over 15 years since he first arrived in this country." Each of the affiants indicated that he lived in Illinois. We note that the applicant initially claimed to have lived in California and Arizona before moving to Illinois. None of the affiants indicated the circumstances of his initial acquaintance with the applicant or how he dated his relationship with the applicant. We further note that each of the affidavits was notarized by [REDACTED] and that the year in the attestation has been changed from 1998 to 1997.
3. A February 5, 2002 letter from [REDACTED], The [REDACTED], which shows an address in Tolleson, Arizona. [REDACTED] apparently one of the owners, signed the letter. The letter indicated that the dairy employed the applicant from June 5, 1985 to September 7, 1986. As discussed above, the applicant claimed on his Form G-325A that he lived in Waukegan, Illinois throughout 1986. Mr. [REDACTED] did not state whether the information about the applicant's employment was taken from company records and did not indicate the applicant's address at the time of his employment, as required by 8 C.F.R. § 245a.2(d)(3)(i). Additionally, the applicant submitted no competent and independent evidence to explain the inconsistencies in his claimed residencies. *Matter of Ho*, 19 I&N Dec. at 591-92.
4. A February 17, 2002 affidavit from [REDACTED] in which he stated that the applicant lived with him at [REDACTED], Arizona from May 1985 to September 1986, while they worked for [REDACTED] at Gladtime West Farm. Mr. [REDACTED] stated that the applicant picked lettuce and cabbage crops. However, Mr. [REDACTED] indicated that the applicant worked on his dairy farm.
5. A copy of a May 11, 1988 letter from Tempel Farms, signed by Dr. [REDACTED], Director of Herd Operations, with a letterhead address for the company at 1 [REDACTED] in Wadsworth, Illinois. Dr. [REDACTED] stated that he knew the applicant worked for [REDACTED] from October 2, 1986 to June 30, 1987, and that Mr. [REDACTED] "had been serving Tempel Farms as an independent contractor for cleaning stalls since March 1985." Dr. [REDACTED] did not state the basis of his knowledge of the applicant's employment with [REDACTED] although he stated that he could "personally verify" the employment, and that "Tempel Farms can verify records of Mr. [REDACTED] since March 1985." The applicant submitted photocopies of photographs that contain no identifying information and therefore are not evidence of his presence and continuing residency in the United States.
6. A January 18, 2002 letter from Holy Family Parish in Waukegan, Illinois, signed by Reverend [REDACTED] Reverend [REDACTED] stated that the applicant had attended mass at the church since 1986. We note that the applicant did not list an affiliation with any church or other organization on his Form I-687 application. Additionally, the letter from Holy Family Parish does not indicate the applicant's address during his period of membership with the church, and does not indicate Reverend Graf's position with the church, as required by 8 C.F.R. § 245a.2(d)(3)(v).
7. Copies of envelopes addressed from the applicant in Illinois and postmarked in 1987 and 1988. Copies of other envelopes submitted by the applicant bear either illegible postmarks or postmarks dated after the qualifying period.
8. Copies of money order receipts. The legible receipts are dated September and November 1987, and show the applicant's name with an address of [REDACTED] Illinois.

9. Copies of the applicant's pay stubs from The Original [REDACTED] for pay periods in July through October 1987.¹ The applicant also submitted a copy of a January 22, 2002 letter from [REDACTED], vice president of [REDACTED], confirming the applicant's employment "from late July through November 1987."
10. A copy of an undated declaration from [REDACTED] production manager of [REDACTED], in which she stated that the applicant had worked for the company since December 9, 1987.
11. A copy of a May 3, 1988 letter from [REDACTED], signed by [REDACTED], production control manager, indicating that the applicant began working for the company on April 18, 1988.
12. A copy of his 1998 Form 1040A, U.S. Individual Income Tax Return, with attached Forms W-2, Wage and Tax Statements, from [REDACTED] Company, Decorative Products [REDACTED]. The applicant also submitted a copy of a Form IL-1040, Illinois Individual Income Tax Return, for the year 1988.
13. A copy of a Social Security Earnings Statement reflecting wages reported for the applicant during the qualifying period in 1988.

On appeal, the applicant submits a July 8, 2004 sworn letter from Dr. [REDACTED] which is identical to his 1988 letter. The applicant also submits the following additional documentation:

1. A July 22, 2004 affidavit from [REDACTED], in which he reaffirms that the applicant worked for him and lived with him in Santa Maria, California. Mr. [REDACTED] stated that he hired the applicant in April 1981 and that the applicant picked strawberries as part of Mr. [REDACTED]'s contracting crew from April to September of each year until 1985. Mr. [REDACTED] stated that he did not have records of the applicant's employment or of his own business during that period.
2. A July 15, 2004 affidavit from [REDACTED], in which he stated that he had known the applicant since April 1981.

We have considered counsel's arguments that the director failed to accord due weight to the applicant's affidavits because they were submitted by friends and family. However, Mr. [REDACTED] provided inconsistent statements regarding the period of time that the applicant worked for him and could not provide company records to verify the applicant's employment with the company. The applicant submitted no other competent objective documentary evidence to corroborate his employment with Mr. [REDACTED]. The single affidavit from Mr. [REDACTED] does not constitute competent objective evidence of the applicant's employment and residency in during the period indicated and is insufficient to meet the applicant's burden of proof. *Matter of Ho*, 19 I&N Dec. at 591-92.

Additionally, the applicant provided inconsistent statements regarding his residences. The applicant stated on his Form G-325A that he lived in Arizona from May to December 1985 and in Waukegan, Illinois from December 1985 to November 1987. However, the applicant provided a statement in which he also

¹ Some of the receipts are not legible.

stated that he lived in Arizona from May 1985 to September 1986. Additionally, according to Mr. [REDACTED] the applicant worked for him in California until September 1985. Furthermore, while the applicant denied on his Form I-687 application that he was associated with any church or other organization during the qualifying period, a letter from Holy Family Parish in Waukegan, Illinois, signed by Reverend [REDACTED], indicated that the applicant had attended the church since 1986. However, Reverend [REDACTED] did not indicate the source of his information regarding the applicant's attendance at the church. 8 C.F.R. § 245a.2(d)(3)(v). With the exception of the affidavit submitted on appeal, the affidavits of personal knowledge submitted by the applicant are all from friends who live in Illinois but claim to have known the applicant since he first came to the United States and lived in California and Arizona. These affiants did not provide information regarding their initial acquaintance with the applicant or other information that would date and explain their relationship with the applicant.

Accordingly, we find that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in the United States in an unlawful status from prior to January 1, 1982

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