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

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FILE: [REDACTED]
MSC 02 079 60672

Office: ATLANTA

Date: DEC 14 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: 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 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. Wiemarm, 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, Atlanta, 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 since before January 1, 1982 through May 4, 1988 or maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, the applicant claims that the documents previously submitted were sufficient to meet his burden of proof and consequently established his eligibility for permanent resident status under the LIFE Act. No new evidence is submitted with the appeal.

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).

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).

The applicant claimed on his affidavit for class membership, which he signed under penalty of perjury on November 1, 1991, that he first entered the United States in November 1980 without inspection. On his Form I-687, which he also signed under penalty of perjury on November 1, 1991, he claimed to reside at [REDACTED] from August 1981 to June 1988. With regard to his employment history, he further claimed to have worked for a "Construction Co." from January 1, 1981 to April 15, 1987, and thereafter for [REDACTED] from April 29, 1987 to the present.

In an attempt to establish continuous unlawful residence since November 1980 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Notarized letter dated August 31, 1991 from MD. [REDACTED], claiming that he has personally known the applicant since June 1981, and that he first met him at Coney Island Park. He further claimed that thereafter, they occasionally met in New York and that they are good friends.
- (2) Notarized letter dated September 16, 1991 from [REDACTED], Contractor, claiming that he worked with the applicant from January 1981 to March 1987. He claims that the applicant resided at [REDACTED] during this time.
- (3) Affidavit dated August 26, 1991 by MD. [REDACTED] Canada, claiming that the applicant visited him in Montreal for approximately one month in May 1987.
- (4) Notarized letter dated September 19, 1991 from [REDACTED], Manager of [REDACTED], claiming that the applicant worked for the company as a sales assistant

since April 1987. He provides the applicant's current address but does not indicate the address at which the applicant resided when he began working for the company.

- (5) Affidavit dated November 6, 1991 by [REDACTED], claiming that he has personally known the applicant since August 1981, when he was residing at [REDACTED]. He claimed that the applicant resided at this address until June 1988, and further claims that they worked together until April 1987.
- (6) Certificate from the Office of Continuing Education, Kingsboro Community College of the City University of New York, dated April 18, 2002, indicating that the applicant completed Level 6 of the English as a Second Language Program in "Winter 1982."
- (7) Affidavit dated August 24, 1991 by [REDACTED] claiming that he has known the applicant since July 1, 1981, and that the applicant is a personal friend. No additional information regarding their relationship is provided.

On January 21, 2005, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that despite the applicant's claim that he continually resided in the United States since November 1980, the record did not contain credible evidence to support a finding that the applicant was continually present from before 1982 through 1988. The applicant was afforded the opportunity to rebut these findings and submit any additional evidence in support of the application within 30 days. The applicant failed to respond to the NOID, and consequently, the application was denied on March 10, 2005.

On appeal, the applicant contends that he was out of the country when the NOID was mailed, thereby explaining his failure to respond. In support of his appeal, the applicant contends that the documentation he submitted prior to the NOID was in fact sufficient to establish his eligibility, and resubmits some of the previously submitted documents. No new evidence in support of the appeal was submitted.

Upon review, the AAO concurs with the director's findings.

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

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 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.

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

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).

The *Matter of E-- M-* provides guidance in assessing evidence of residence, particularly affidavits. *See* 20 I&N Dec. 77. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims he entered the United States in November 1980, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided a letter and certificate from Kingsborough Community College, claiming that the applicant completed an ESL course in the Winter of 1982. While this document suggests that the applicant was in fact present in the United States in the beginning of 1982, it does not establish that he entered the United States and resided there in an unlawful status *before* January 1, 1982, as required by 8 C.F.R. § 245a.11(b).

The applicant also provides letters and affidavits from friends and former employers in support of the premise that the applicant unlawfully resided in the United States prior to 1982. For example, the notarized letter from MD. [REDACTED] and affidavit from [REDACTED] claim that they knew the applicant in June and July 1981, respectively. These statements, however, merely claim that they were friends with the applicant, and do not state the address at which they knew him during this period. Furthermore, they do not state the basis of their acquaintance with him nor do they provide the origin of the minimal information they provide.

Additionally, the applicant provides a notarized letter from [REDACTED], Contractor. This letter claims that the applicant worked with him from January 1981 to March 1987. While the regulations provide that a letter from a past employer is acceptable in lieu of employment records such as paystubs or W-2 forms, the regulations also require such letters to meet basic requirements. For example, employment letters should be on company letterhead and should state the applicant's address during the period of employment, his duties with the company, whether or not the information provided is taken from official company records, and where the records are located and whether the Service may have access to said records if necessary. *See* 8 C.F.R. § 245a.2(d)(3)(i). This letter fails to comply with the regulatory requirements, since it omits the applicant's address at the time of employment and fails to state whether the information contained in the letter was taken from official company records. In addition, the letter fails to state where the records are located and whether the service may have access to the records.

The applicant also submits a notarized employment letter from [REDACTED] of Jerod's Hot Bagels, claiming that the applicant worked the company since April 1987. This letter also fails to meet the requirements set forth in 8 C.F.R. § 245a.2(d)(3)(i), since it, too, omits the applicant's address when he commenced working for the company as well as whether the information contained in the letter was taken from official company records or the location of the records and whether the Service may have access to the records.

A final affidavit from MD. [REDACTED] of Montreal, Canada, claims that the applicant visited him for approximately one month in May 1987. No additional information regarding the basis for the information he attests to is provided.

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 from organizations 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. 8 C.F.R. § 245a.2(d)(3)(v).

The documentation provided, contrary to the applicant's assertions, is insufficient to demonstrate that he unlawfully resided in the United States before January 1, 1982 and continually resided there unlawfully through May 4, 1988. Furthermore, based on the reasons set for above, the documentation is likewise insufficient to establish that he continually resided in an unlawful status in the United States through May 4, 1988, since the affidavit attesting to his trip to Canada provides minimal information and no details regarding the exact length of the trip. The applicant has not submitted any credible contemporaneous documentation to establish presence in the United States from the time he claimed to have commenced residing in the U.S. through May 4, 1988, such as paystubs, rent receipts, leases, utility bills, or contract in which the applicant was a party. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

As stated above, the affidavits and notarized letters submitted in support of this application fall far short of meeting the above criteria. The affidavits of [REDACTED] and [REDACTED] contain minimal information regarding the nature of their acquaintance with the applicant and fail to provide detailed information. The notarized letter from MD. [REDACTED] is likewise insufficient. Specifically, these documents do not state the address at which the applicant resided, the nature of their relationship with the applicant or the frequency of their contact.

Given the absence of contemporaneous documentation and the reliance on affidavits and letters which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since

before January 1, 1982 through May 4, 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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