



U.S. Citizenship
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FILE: [REDACTED] Office: SAN FRANCISCO Date: DEC 17 2007
MSC 03 247 62341

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 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, San Francisco, 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 United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel for the applicant claims that the service erred in denying the application, and claims that the documents previously submitted were sufficient to meet the applicant's burden of proof by a preponderance of the evidence. 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, that he first entered the United States in May 1981 without inspection. On his Form I-687, which he also signed under penalty of perjury on April 14, 1990, he claimed to reside at the following addresses in Fresno, California during the relevant period:

May 1981 to October 1984:

October 1984 to December 1988:

With regard to his employment history, the applicant claimed that he has been self-employed since May 1981 by selling newspapers, flowers, and washing cars.

In an attempt to establish continuous unlawful residence since May 1981 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) Affidavit dated May 29, 2004 by [REDACTED], a resident of San Francisco, California, claiming that she has known the applicant for the last 19 years. She claims that the applicant was a handyman for her father, who is a property owner in San Francisco. She concluded by stating that she first met the applicant in 1985 when he came to her home to look for a job, and that she further has personal knowledge of his presence in the United States between November 6, 1986 and May 2004.
- (2) Letter from applicant dated May 31, 2004 discussing his absences from the United States. Specifically, the applicant states that he went to Canada on September 5, 1987 to see his sick sister. He claims that during this visit, he had no intention to return to the United States and

thus destroyed all documentation pertaining to the relevant period from January 1, 1982 to May 4, 1988. He then learned of his eligibility to apply under amnesty and returned to the United States on September 25, 1987.

- (3) Affidavit dated April 11, 1990 by [REDACTED] friend of the applicant, who claims that he has known the applicant since May 1981 and that he has continually resided in the United States from May 1981 to the present. He further claims to have knowledge of the applicant's brief trip to Canada in September 1987.
- (4) Affidavit dated March 29, 1990 by [REDACTED] claiming that she met the applicant in 1981 at a friend's party, and that he has continually resided in the United States since 1981. She further claims to have knowledge of the applicant's trip to Canada in 1987, and claims that he resided at 4 [REDACTED] from May 1981 to October 1984 and at [REDACTED] from October 1984 to December 1988.

On April 27, 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 May 1981, the record did not contain credible evidence to support a finding that the applicant was continually present from before 1982 through 1988. The director specifically discussed the deficiencies in the affidavits provided, and afforded the applicant an opportunity to rebut these findings and submit any additional evidence in support of the application within 30 days.

In a response dated May 23, 2005, counsel for the applicant indicated that all relevant documentation pertaining to the applicable period had been submitted, and that the applicant had no additional documentation to provide since he did not have legal status in the United States during the years in question. The director consequently denied the application on July 5, 2005.

On appeal, counsel for the applicant contends that the applicant had established his eligibility by a preponderance of the evidence. 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.

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 in this case claims he entered the United States in May 1981, 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 affidavits in support of the contention that he was present in the United States prior to 1981, but these documents are insufficient to establish his eligibility. Specifically, the affidavits of [REDACTED] Berrones and [REDACTED] despite their claims that the applicant was present in the United States in 1981, do not meet the evidentiary standards generally accepted by the AAO.

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. See 8 C.F.R. § 245a.2(d)(3)(v).

Although the affidavit of [REDACTED] states the addresses at which the applicant resided during their period of acquaintance, she does not state the basis of her acquaintance with the applicant or the origin of the information to which she attests. Furthermore, she does not provide the means by which she may be contacted. The affidavit of [REDACTED] is likewise deficient, since he merely claims to have known the applicant since 1981. He provides no addresses for the applicant prior to 1990, and omits the basis of his acquaintance with the applicant or the origin of the information to which he attests.

The affidavit of [REDACTED], pertaining to the period from 1985 to 1988, is also deficient. Specifically, she states that the applicant worked as a handyman for her family, who apparently resided in San Francisco during the claimed period. This contradicts the claims by the applicant that he

continually resided in Fresno during this period, since Fresno is approximately 200 miles from San Francisco. In addition, the affiant fails to specifically state the basis for her knowledge of the applicant's continuous presence in the United States from November 6, 1986 to May 2004, nor does she provide an address for the applicant during the period in question. The fact that they resided in different cities during this period further undermines the credibility of this affidavit. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

These affidavits, along with the applicant's letter, are 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. 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. It is noted that the applicant claims to have destroyed all relevant documentation pertaining to this period during his brief trip to Canada in September 1987. This contention, however, does not excuse the applicant from meeting the regulatory requirements for eligibility. 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.

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.