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U.S. Citizenship  
and Immigration  
Services

12

FILE:

Office: Dallas

Date: FEB 07 2007

MSC 01 350 61262

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:

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, Dallas, 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 asserts that Citizenship and Immigration Services or CIS (the successor to the Immigration and Naturalization Service or the Service) imposed a higher burden of proof than the accepted preponderance of the evidence in denying the application. Counsel submits a new document in support of the applicant's claim of residence.

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).

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.

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).

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 June 27, 1990. 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 Las Vegas, Nevada, from January 1981 to April 1985, and [REDACTED] in Las Vegas, Nevada, from April 1985 to February 1989. Further, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he had only one absence from this country in that period from January 1, 1982 to May 4, 1988 when he traveled to Mexico for twenty days from June 1987 to July 1987 to see his family. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he worked only for Manuel Felix of North Las Vegas, Nevada as a carpenter's helper from January 1981 to March 22, 1990, the date the Form I-687 application was executed.

A review of parts #48 through #51 of the Form I-687 application reveals that the application itself as well as the documents included in the application package had been prepared, notarized, and reviewed by [REDACTED]

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit of residence that is signed by [REDACTED] indicated that he had personal knowledge that the applicant resided in the United States since 1985 with the exception of a single departure from this country from June 1987 to July 1987. Although the affiant attested to the applicant's residence in this country since 1985, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in this country. Further, [REDACTED] failed to provide any information relating to the applicant's residence in the United States in that period prior to January 1, 1982 up to 1985.

The applicant also submitted an employment verification affidavit that is signed by [REDACTED] of North Las Vegas, Nevada, who indicated that he employed the applicant as a carpenter's helper from January 1981 to December 7, 1989 the date the affidavit was executed.

On November 1, 1996, the Service issued a notice to the applicant informing him of adverse information that had been obtained relating to his claim to class membership. Specifically, the applicant was informed that the preparer of his Form I-687 application and application package, [REDACTED] had been convicted of violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on August 4, 1993. The record contains evidence demonstrating that these convictions were the result of Operation Desert Deception, a large-scale fraud investigation centered in Las Vegas, Nevada, Phoenix, Arizona, and Los Angeles, California. The operation targeted providers of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits; *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (Zambrano). To date, sixty people, including two former Service officers, have been convicted of legalization fraud, bribery, or tax evasion. In the course of the investigation, 22,000 files, including the applicant's file, were earmarked and segregated as having been filed in Las Vegas, Nevada in the time period under investigation. The applicant was informed that the fact that the preparer of his Form I-687 application was convicted of felony violations for her role in the submission of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits, seriously diminished the credibility of information contained in the applicant's Form I-687 application and supporting documentation. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a letter containing the letterhead of the [REDACTED] [REDACTED] in Arlington, Texas, that is dated November 26, 1996 and signed by [REDACTED] who listed his position as manager. [REDACTED] testified that the applicant resided at this apartment complex at [REDACTED] in apartment #96 in Arlington, Texas from August 21, 1981 to October of 1985. However, [REDACTED]'s testimony that the applicant lived at this address in Arlington, Texas is directly contradicted by the applicant's own testimony at part #35 of the Form I-687 application that he resided at [REDACTED] in Las Vegas, Nevada, from January 1981 to April 1985, and [REDACTED] in Las Vegas, Nevada, from April 1985 to February 1989.

The applicant also provided an employment letter containing the letterhead of [REDACTED] and [REDACTED] in Arlington, Texas that is signed by an individual with first name [REDACTED] and an illegible last name. This individual stated that the applicant sporadically worked for him on weekends from November 1981 to April 1985. However, the affiant's testimony that the applicant was employed by this enterprise is in direct conflict with the applicant's own testimony that that he worked only for [REDACTED] of North Las Vegas, Nevada as a carpenter's helper from January 1981 to March 22, 1990, the date the Form I-687 was executed.

Subsequently, on September 15, 2001, the applicant submitted his Form I-485 LIFE Act application. On the Form G-325A, Record of Biographic Information, which accompanied his Form I-485 LIFE Act application, the applicant indicated that he married his wife in Chihuahua, Mexico on February 1, 1986. The applicant's admission that he was absent from the country when he was married in Mexico on February 1, 1986 directly contradicted his prior testimony at part #35 of the Form I-687 application that he had only been absent from this country on one occasion during the period in question when he traveled to Mexico for twenty days from June 1987 to July 1987 to see his family. The fact that the applicant failed to list this additional absence, as well as the length and date of the absence, seriously undermines the credibility of his claim of residence for the period in question.

In support of his claim of residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] declared that he had personal knowledge that the applicant resided in Las Vegas, Nevada since February 1981 through February 23, 1990 the date affidavit was executed. While [REDACTED] attested to the applicant's residence in this country since February 1981, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in this country.

The applicant included a new affidavit of residence that is dated February 22, 1990 and signed by [REDACTED]. [REDACTED] stated that the applicant and he resided together at [REDACTED] Philadelphia in Las Vegas, Nevada from 1985 to February 1989. However, [REDACTED] failed to provide any information relating to the applicant's residence in the United States in that period prior to January 1, 1982 up to 1985. In addition, it must be noted that the affidavit has been notarized by Irma Lopez, the same individual convicted for violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on August 4, 1993 as has been previously discussed. Consequently, this affidavit cannot be considered as probative to the applicant's claim of residence in the United States for the period in question.

The applicant provided an affidavit that is signed by [REDACTED], who stated that the applicant lived with him at [REDACTED] in Las Vegas, Nevada during the year 1987 on a periodic basis. [REDACTED] also noted that the applicant had also periodically lived with him at an unspecified address in the period from 1988 to 1990. However, the affiant failed to provide any information relating to the applicant's residence in the United States in that period prior to January 1, 1982 up to 1987.

The applicant submitted a photocopy of the "Nevada Immunization Record" of his son, Guerrero [REDACTED] which reflects that his son received immunizations on May 12, 1987, September 11, 1987, and December 12, 1987 during the period in question. While this immunization record may be considered as evidence that the applicant's son was residing in this country after May 12, 1987, it cannot be considered as direct and probative evidence that the applicant himself was residing in the United States for any portion of the requisite period.

The applicant also provided an employment letter dated October 10, 2003 that is signed by [REDACTED] [REDACTED] stated that he employed the applicant as a busboy at his restaurant, China Inn Restaurant, in Arlington, Texas from 1982 to 1984. However, the affiant's testimony that the applicant was employed by this enterprise is in direct conflict with the applicant's own testimony that that he worked only for [REDACTED] of North Las Vegas, Nevada as a carpenter's helper from January 1981 to March 22, 1990, the date the Form I-687 was executed. In addition, the applicant provided no explanation as to how he was able to work for this enterprise in Arlington, Texas while residing over 900 miles away in North Las Vegas, Nevada during that period from 1982 to 1984.

The applicant included an affidavit of residence that is dated March 15, 1990 and signed by [REDACTED] [REDACTED] stated that the applicant and he resided together at [REDACTED] [REDACTED] in Las Vegas, Nevada from January 1981 to April 1985. However, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States in that period from May 1985 to May 4, 1988. Furthermore, it must be noted that the affidavit has been notarized by [REDACTED] the same individual convicted for violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on August 4, 1993 as has been previously discussed. Consequently, this affidavit cannot be considered as probative to the applicant's claim of residence in the United States for the period in question.

The applicant submitted an affidavit that is signed by [REDACTED] who declared that he had personal knowledge that the applicant resided in Las Vegas, Nevada since 1981 because he and the applicant worked together there for at least three years. [REDACTED] stated that the applicant subsequently moved to Texas and that he and the applicant reunited when he also moved to Texas in 2003. Although [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in this country.

On March 11, 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 evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted two new affidavits of residence in support of his claim of residence in this country since prior to January 1, 1982. The first of these affidavits is signed by [REDACTED] and dated March 26, 2004. [REDACTED] stated that he had resided in this country for over twenty years and he and the applicant began working in the United States in 1980. While [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any relevant and specific testimony relating to the applicant's residence in this country.

The second affidavit is signed by [REDACTED] and dated March 26, 2004. [REDACTED] declared that he and the applicant had known each other since they were teenagers and that the applicant had resided in the United States since 1982. However, [REDACTED] failed to provide any

direct and verifiable information such as the applicant's address(es) in this country during the requisite period.

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 May 16, 2004.

On appeal, counsel submits a new affidavit of employment that is signed by [REDACTED] the same individual who had signed the employment letter dated October 10, 2003 that was included with the Form I-485 LIFE Act application. In the new affidavit, [REDACTED] reiterates that he employed the applicant as a busboy at his restaurant, China Inn Restaurant, in Arlington, Texas from 1982 to 1984. However, as previously discussed, [REDACTED]'s testimony that he employed the applicant directly conflicts with the applicant's own testimony at part #36 of the Form I-687 application that that he worked only for [REDACTED] of North Las Vegas, Nevada as a carpenter's helper from January 1981 to March 22, 1990, the date the Form I-687 was executed. In addition, neither counsel nor the applicant provides an explanation as to how the applicant was able to work for [REDACTED] in Arlington, Texas while residing over 900 miles away in North Las Vegas, Nevada during that period from 1982 to 1984.

Counsel asserts that CIS imposed a higher burden of proof than the accepted preponderance of the evidence in denying the application. However, counsel fails to address any of the conflicts and contradictions in testimony that have been discussed above relating to the applicant's claim of residence in this country for the requisite period and the documentation submitted in support of that claim. In light of the minimal probative value of the evidence contained in the record, counsel's assertion that any higher burden of proof was utilized in the denial of the Form I-485 LIFE Act application other than the accepted preponderance of the evidence enunciated in *Matter of E-M-*, 20 I&N Dec. at 79-80 is without merit. 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).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation, adverse information relating to the individual who prepared his Form I-687 application, and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence all 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 probative value, 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 as well.

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