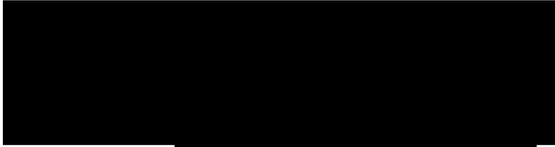


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Services

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FILE: [Redacted] Office: LOS ANGELES
MSC 02 145 60683

Date: **MAY 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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles, 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 from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he "lived by cash" during the qualifying period and can only submit third-party affidavits to prove residency for this period, but contends that the evidence he has submitted is sufficient to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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 through May 4, 1988. 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 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.

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).

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 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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A declaration dated January 9, 2005 from [REDACTED] of Simi Valley, California stating that she met the applicant in September 1981 at a church gathering near Chicago, Illinois. [REDACTED] maintained contact with the applicant through monthly telephone conversations. She attests that the applicant lived on [REDACTED] in Chicago, Illinois until approximately October 1985, then moving to [REDACTED]
- An affidavit notarized on December 23, 2003 from [REDACTED] of Los Angeles, California stating that he met the applicant at the applicant's residence in Chicago, Illinois in September 1981 when he visited the applicant there at the request of the applicant's father. [REDACTED] attests to the applicant's subsequent residences and employment, of which he learned through telephone conversations with the applicant.
- An affidavit notarized on December 1, 2003 from [REDACTED] of Palmdale, California stating that she first met the applicant in September 1981 at a Seventh-day Adventist meeting in Hinsdale, Illinois. [REDACTED] was vacationing from her residence in Los Angeles, but maintained contact with the applicant through monthly telephone conversations. [REDACTED] attests that the applicant lived on Rockwell Street in Chicago, Illinois until approximately October 1985, then moving to [REDACTED]
- A letter signed December 17, 2001 from [REDACTED] Pastor of a Seventh-Day Adventist Church in Tujunga, California, stating that the applicant has been a member of the Seventh-

day Adventist Church in the United States since January 1983, but has attended regularly since September 1981.

- An affidavit notarized on December 17, 2001 from [REDACTED] of Los Angeles stating that she and the applicant have been friends since she met the applicant in Chicago, Illinois in September 1981. [REDACTED] also attests to the applicant's addresses, employment, name changes and absences from the United States since the applicant's arrival in 1981.
- An affidavit notarized on December 12, 2001 from [REDACTED] Pinho of Burbank, California stating that he and the applicant have been friends since he met the applicant in Chicago, Illinois in September 1981. [REDACTED] also attests to the applicant's addresses, employment, name changes and absences from the United States since the applicant's arrival in 1981.
- An affidavit notarized on December 10, 2001 from [REDACTED] of Palmdale, California stating that she and the applicant have been friends since she met the applicant in Chicago, Illinois in September 1981. [REDACTED] also attests to the applicant's addresses, employment, name changes and absences from the United States since the applicant's arrival in 1981.
- Photographs allegedly showing the applicant in Chicago, Illinois in 1981.

On December 18, 2003, the director issued a Notice of Intent to Deny (NOID) finding that the affidavits submitted by the applicant did "not establish the basis upon which the statements are being made or the origin of the information contained in the statements." The director noted that the applicant "provided very little objective evidence to which the affidavits/statements can be compared to determine whether the attestations are credible, plausible, or internally consistent with the record." The director also found that the "documentation submitted as evidence of [the applicant's] employment during 1981-1988 lacks specific details and fails to comply with the requirements outlined" in 8 C.F.R. § 245a.2(d).

In a decision to deny the application dated December 29, 2004, the director noted that the applicant had "failed to submit a rebuttal to the proposed grounds of denial" and denied the application.

On appeal, the applicant submits a sworn statement notarized on December 23, 2003 in which he explains that his efforts to locate his first employer in the United States have been unsuccessful, but that he is submitting additional affidavits to supplement the affidavits previously produced. The applicant states that he gave other evidence to an employee of the attorney that filed his initial application and suspects that this employee "lost" the evidence, though the attorney has disavowed any knowledge of lost evidence.¹

¹ The record contains utility bills and letters apparently submitted with the applicant's I-687, Application for Status as a Temporary Resident, but these documents are dated subsequent to the qualifying period.

Upon review of all the evidence in the record, including the evidence presented by the applicant on appeal, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The applicant has failed to remedy the insufficiency in the evidence pointed out by the director in the decision. As evidence of residency, the applicant has submitted third-party affidavits from residents of California who claim to have met the applicant in Chicago, Illinois in September 1981, and attest to his employment, residences, church membership, name changes and other life events thereafter. The basis of this knowledge, to the extent the affiant's even provide such information, are telephone conversations the affiants had with the applicant subsequent to their initial meeting. The affiants did not reside in or around Chicago during the qualifying period, and apart from initially meeting the applicant there in September 1981, none of the affiants claims to have seen the applicant from January 1, 1982 through May 4, 1988. Thus, none of the affidavits submitted by the applicant demonstrate personal firsthand knowledge of the applicant's residency in the United States for the qualifying period and are of minimal probative value. Likewise, it is not possible to ascertain the exact location where the photographs submitted by the applicant were taken.

In addition, the applicant has presented inconsistent evidence concerning the date and manner of his initial entry into the United States. On the form to determine class membership, which the applicant signed under penalty of perjury, the applicant indicated that he first entered the United States with a non-immigrant visa on September 15, 1981. On his original Form I-687, Application for Status as a Temporary Resident, signed under penalty of perjury by the applicant on May 9, 1990, the applicant indicated that he was admitted to the United States on a B1/B2 nonimmigrant visa in September 1981 and that his authorized period of stay did not expire until January 4, 1982. The applicant later sought to revise this testimony, averring in an affidavit notarized on January 30, 2002, and in a sworn statement signed on September 30, 2003, that although he had obtained a visa on September 5, 1981 that expired on December 4, 1981, he never used this visa but entered the United States without inspection at El Paso, Texas on September 15, 1981. The applicant claims the mistakes in his original submissions were the fault of his former counsel [REDACTED] but has submitted no additional evidence to substantiate his revised testimony concerning the date and manner of his initial entry into the United States.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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). It is not sufficient for the applicant merely to assert a revised version of events to replace the factual account he previously gave without also providing objective evidence resolving the discrepancies and substantiating the revised testimony.

It is also noted that the applicant filed another Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on May 6, 2005. In a decision to deny that application issued on July 26, 2006, the director determined again that the applicant had failed

to submit sufficient evidence of residency for the years 1981 to 1988. The applicant has not appealed that decision.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the inconsistencies in and insufficiency of the applicant’s evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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