



U.S. Citizenship
and Immigration
Services

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NOV 01 2007

FILE:

MSC 02 078 65923

Office: LOS ANGELES

Date:

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:

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. 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 since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the applicant had failed to submit sufficient evidence to establish his presence in the United States in 1985 and 1987, and noted credibility issues with evidence pertaining to the years 1984, 1986 and 1988.

On appeal, the applicant asserts that he has complied with the regulatory requirements, and alleges that the length of time that has passed since his initial entrance into the United States has made it difficult to obtain required evidence. In support of the appeal, the applicant submits one new affidavit.

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).

In the affidavit for class membership, which he signed under penalty of perjury in July of 1991, the applicant stated that he first arrived in the United States in September 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant again stated that he first entered the United States in September 1981, and claimed to live at the following addresses in California during the requisite period:

1981 to 1987:

1987 to Present:

In an attempt to establish continuous unlawful residence since before January 1982 through 1988, the applicant furnished the following evidence:

- (1) Affidavit dated July 20, 1991 from [REDACTED] claiming that he knew the applicant in Los Angeles, California since 1981 and that "he is my good friend."
- (2) Affidavit dated July 22, 1991 from [REDACTED], who states that the applicant worked for [REDACTED] Transportation from 1981 to 1987. The affidavit did not state the applicant's address at the time of his employment nor his duties, and merely claimed that he earned \$150.00 per week.
- (3) Affidavit dated July 20, 1991 from [REDACTED] claiming that he has known the applicant to live in Los Angeles from 1981 to the present.

- (4) Affidavit dated July 20, 1991 from [REDACTED], claiming that he has known the applicant in Los Angeles, California since 1981, and that they lived together. No further information, such as the time period or the address at which they lived, was provided.
- (5) Affidavit dated July 20, 1991 from [REDACTED] stating that he is a friend of the applicant and personally knows that he has resided in Los Angeles, California since 1981.
- (6) Affidavit dated July 20, 1991 from [REDACTED] stating that he and the applicant are friends and that he has seen the applicant continuously in Los Angeles since 1981.
- (7) Affidavit dated April 7, 2001 from [REDACTED] declaring that he has known the applicant since 1984. The affiant claims that he met the applicant when they worked together as warehousemen, but does not state by whom they were employed. He claims that he has seen the applicant regularly since they met.
- (8) Affidavit dated March 17, 2001 from [REDACTED] who states that she has known the applicant since June 1985. She claims that she met him through family members, and that she sees him on a regular basis.
- (9) Affidavit dated July 22, 1991 from [REDACTED] claiming that the applicant lived at [REDACTED] from 1981 to 1987. This statement contradicts the applicant's claim on Form I-687 that he resided at [REDACTED].
- (10) Affidavit dated June 30, 1990 from [REDACTED] claiming that the applicant has been employed by [REDACTED] trucking since 1987. The applicant's duties were not listed, but the affiant claimed that the applicant earned \$400.00 per week. This fill-in-the-blank affidavit omits the location of the company records and fails to state whether the records are available for examination by CIS.
- (11) Affidavit dated July 22, 1991 from [REDACTED] owner of the property located at [REDACTED] in which he states that the applicant resided at this address from 1988 to 1991. This statement contradicts that applicant's claim that he moved to this address in 1987.
- (12) Monthly Rent Receipts dated February 1982, April 1984, and June 1986, showing that the applicant paid \$100 per month for one room to [REDACTED] during those periods.
- (13) Monthly Rent Receipt dated November 1988, showing that the applicant paid \$150 for one room to [REDACTED] for the period from November 1988 to December 1988.
- (14) Receipt dated July 7, 1983 from Best Plush, located in Los Angeles, California, for the purchase of a black and white television set. It is noted that the invoice lists the applicant's address as [REDACTED] which contradicts the applicant's claim that he resided at [REDACTED] from 1981 to 1987.

- (15) Receipt dated July 21, 1984 from Hollywood Bed & Spring Co. for the purchase of a bed with spring. Again, the invoice lists the applicant's address as [REDACTED] which contradicts the applicant's claim that he resided at [REDACTED] from 1981 to 1987.

On December 7, 2004, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through 1988. Specifically, the director noted that no documentation other than affidavits was submitted for the years 1985 and 1987, and pointed out that the rent receipts submitted by the applicant for 1984, 1986 and 1988 displayed a Rediform logo no longer in use during those years. The applicant was afforded the opportunity to submit additional evidence in support of the application and/or in rebuttal of the director's objections.

In response, the applicant submitted a letter dated December 30, 2004, alleging that the notary incorrectly put the wrong address for the applicant in some of the affidavits, and further was responsible for the minimal information furnished in fill-in-the-blank affidavits from 1991. In addition, the applicant acknowledges that the rent receipts from 1984, 1986 and 1988 were not the originals from the time, but the only receipts available to him when he went back to his old landlords to request documentation.

The applicant also submitted an affidavit from [REDACTED] dated December 30, 2004, who claims that he knew the applicant since 1981 and that he first met him while working at Diaz Bros. He further claims that he and the applicant "shared living accommodations" for a while.

The director denied the application on January 24, 2005, noting that there was insufficient evidence to show that he was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988.

On appeal, the applicant reasserts that he has satisfied his burden of proof, and submits a new affidavit from [REDACTED] dated February 22, 2005. Where, as here, an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, it should have submitted the document in response to the director's NOID. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Upon review of the record of proceeding, the AAO concurs with the director's decision.

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 quality 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.

The Matter of E-- M-- provides guidance in assessing evidence of residence, particularly affidavits. 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 September 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 numerous affidavits from acquaintances and former employers in support of the contention that he entered the United States prior to January 1, 1982. The affidavits submitted in support of this claim, however, do not meet the regulatory requirements.

First, in lieu of an employment letter, the applicant submitted multiple affidavits from Jose Elias Diaz Robles of Diaz Brothers Transportation as well as one affidavit from [REDACTED] Trucking. These affidavits, however, are insufficient. Specifically, in lieu of an employment letter, CIS will accept an affidavit form-letter stating that the alien's employment records are unavailable and why they are unavailable, as well as the employer's willingness to come forward and give testimony as requested. *See* 8 C.F.R. § 245.a2(d)(3)(i)(F). These affidavits do not state this information.

The applicant also submits numerous affidavits of acquaintance in support of the premise that he continually resided in an unlawful status in the United States during the requisite period. As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintance have been submitted, there are several unresolved inconsistencies contained therein which the applicant failed to clarify. These inconsistencies would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony 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. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. The affidavits submitted in support of this application fall far short of meeting the above criteria.

First, the July 22, 1991 affidavit of [REDACTED], which claims that the applicant lived at 1908 [REDACTED] from 1981 to 1987, directly contradicts the applicant's claim on Form I-687 that he resided at [REDACTED] from 1981 to 1987. The issue of the applicant's residence during this period is further complicated by the submission of two receipts from Best Plush and Hollywood Bed & Spring, both of which list the applicant's address as [REDACTED]. Neither the applicant nor [REDACTED] make reference to this address in any of the documentation submitted. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the rent receipts, dated February 1982, April 1984, June 1986, and November 1988 pose two additional problems. First, as noted by the director, the Rediform logo on three of the receipts was no longer in use at the time of their alleged execution. The applicant, however, addressed this issue by claiming that the receipts were issued after the fact in an attempt to create some documentation of his residency during the requisite period since he did not retain any rental receipts from that time. The fact that no original receipts were available and that the only receipts submitted were for one month out of each respective year raises issues regarding the credibility of this evidence. 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. *Id.* at 591.

More importantly, however, is the affidavit of [REDACTED], owner of the property located at [REDACTED] who states that the applicant resided at this address from 1988 to 1991. As discussed above, this contradicts the applicant's claim that he moved to this location in 1987. Moreover, the rent receipt for November 1988 is signed by [REDACTED] the same person who signed the rent receipts for 1982, 1984 and 1986. According to the applicant, he resided at [REDACTED] from 1981 to 1987, the same address listed for [REDACTED] Transportation. While it is plausible, therefore, that [REDACTED] would sign rent receipts for 1982, 1984 and 1986, there is no explanation or discussion in the record as to why the fourth rental receipt for November 1988 was signed

by [REDACTED] when [REDACTED] was clearly the applicant's landlord during this time. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Finally, the remainder of the affiants merely claim to be friends of the applicant, but fail to specifically articulate the origin of the information to which they attest or the basis for their acquaintance with him. They merely claim that they have known him since 1981 (no month is provided in any of the affidavits) and that they continue to be friends. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Given the unresolved inconsistencies in the record, coupled with the absence of contemporaneous documentation and the reliance on affidavits 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 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.