



U.S. Citizenship
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Services

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FILE: [Redacted] MSC 01 282 60235

Office: ATLANTA Date:

NOV 20 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.

A handwritten signature in black ink, appearing to read "R. 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, 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. On appeal, the applicant contends that the decision was arbitrary and constitutes an abuse of discretion in that the director did not consider new evidence submitted in response to the Notice of Intent to Deny (NOID). In support of these contentions, counsel submits a brief and additional evidence.

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 on August 21, 1990, the applicant stated that he first arrived in the United States on February 16, 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 indicated he lived at the following addresses during the requisite period:

[REDACTED]

On July 1, 2002, CIS issued a Request for Evidence, requesting the applicant to forward proof of his unlawful status in the United States and his continuous physical presence in the United States from January 1, 1982 to May 4, 1988 and November 6, 1986 to May 4, 1988, respectively. In response, the applicant submitted the following documents:

- (1) Affidavit dated June 14, 2001 from [REDACTED] claiming that he has known the applicant since December 1981. The affiant claims that the applicant was a flower vendor and that he was one of his customers. The affiant further claims that the applicant suddenly disappeared in July 1984, and returned in August 1986. According to the affiant, the applicant claimed that he had been in New York during that period. Although [REDACTED] claims to have personal knowledge that the applicant lived in the United States since December 1981, he does not state the address at which he knew him.
- (2) Affidavit dated June 14, 2001 from [REDACTED] claiming that she has personally known the applicant since June 1982. The affiant claims that applicant was a flower vendor and that she was one of his customers. The affiant further claims that the

applicant left for New York in July 1984 and returned in August 1986. According to the affiant, she helped him secure a place to live upon his return at [REDACTED]. Finally, the affiant claims to have knowledge of the applicant's continued presence because she "regularly met him" except for May 1987 when he visited Pakistan.

- (3) Affidavit dated August 21, 1990 from [REDACTED] verifying the applicant's departure from the United States from May 4, 1987 to May 28, 1987, in order to visit family. No additional information, such as the basis of this information or the source of her knowledge of the applicant's departure, is provided.
- (4) Affidavit dated August 17, 1990 from [REDACTED] claiming that she knew the applicant from August 1986 to May 1989. She claims that during that period, he resided with her, and worked as a flower vendor.
- (5) Undated affidavit from [REDACTED] verifying that the applicant was living with him from February 1981 to June 1984. He further claimed that the applicant was employed as a flower vendor in a restaurant.
- (6) Undated letter from [REDACTED] and Management Co., located in Loudonville, New York, verifying that the applicant was employed by the company as a cleaner from July 1984 to July 1986 for \$125 per week. No additional information is provided, such as the address at which the applicant resided during that period.
- (7) Affidavit dated August 16, 1990 from [REDACTED], d/b/a [REDACTED] claiming that he knew the applicant from February 1981 to June 1984 as a flower vendor. The affiant provides no information regarding the source of his knowledge of the applicant.
- (8) Lease agreement dated February 1, 1981 between the applicant and [REDACTED] in which the applicant agreed to lease the property [REDACTED] Dalton, Georgia 30722 for a period of 2 years at a rate of \$125 per month.

On February 10, 2005, CIS issued a NOID. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, as well as maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Specifically, the director noted that attempts by CIS to verify the statements contained in the affidavits provided had been refuted. Specifically, [REDACTED], with whom the applicant claimed to have had a two-year lease, claimed that no one lived with him during that period and that neither he nor his wife knew the applicant. This seriously impairs the credibility of a separate affidavit allegedly prepared and executed by [REDACTED] on behalf of the applicant. In addition, [REDACTED] and [REDACTED] both indicated that contrary to the statements in their affidavits, they had not known the applicant since 1981 as claimed. Rather, they indicated that they knew him for approximately 6 to 10 years. Since the phone interviews with [REDACTED] and [REDACTED] took place on January 13, 2003, it stands to reason that these persons did not become acquainted

with the applicant until 1993 at the earliest. Although they were afforded an opportunity to rebut these findings, neither counsel nor the applicant responded to the director's NOID.¹

The director denied the application on March 14, 2005, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988, or that he had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the denial erroneously disregarded the response to the NOID, which was allegedly filed on March 5, 2004. However, counsel does not provide a copy of this response. No additional documentation with regard to the relevant period is provided.

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--* decision 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.

Although the applicant claims he entered the United States in February 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. In support of his entry and his continuous unlawful presence in the United States from 1982 to 1988, the applicant relies on a lease agreement and affidavit from [REDACTED] which claims that the applicant lived with him beginning in February 1981 and that he had a two year lease. As stated above, upon contacting [REDACTED] he claimed that no one resided with him during this period, and that he did not know the applicant. Doubt cast on any aspect of the

¹ Counsel on appeal contends that a response to the NOID was filed on March 5, 2004. A review of the file indicates that no response or additional documentation was received, nor does counsel submit a copy of the alleged response and supporting documentation on appeal.

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). 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).

Although another affidavit from [REDACTED] is submitted in support of the applicant's presence prior to 1982, [REDACTED] also claimed that the statement made in the affidavit was inaccurate, and that in reality, he had only known the applicant for six to ten years when contacted by CIS on January 13, 2003.

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. As discussed above, the affidavits of [REDACTED] and [REDACTED] have been discredited. Moreover, [REDACTED] when contacted by CIS on January 13, 2003, also claimed that she had not known the applicant since June 1982 as claimed, but rather became acquainted with him in the early 1990's. As stated above, 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. at 591.

Based on the above information, the applicant's affidavits of acquaintance, as well as his claims of residency from 1981 to 1984, have been discredited. The evidence submitted in support of his presence thereafter is likewise insufficient. For example, the applicant submits an undated employment letter from [REDACTED] and Management Co., located in Loudonville, New York, verifying that the applicant was employed by the company as a cleaner from July 1984 to July 1986 for \$125 per week. No additional information is provided, such as the address at which the applicant resided during that period, or whether the information was taken from official company records. In addition, the letter does not clearly state the name of the person executing the document, and it does not contain a statement that the applicant's employment records are available for examination by CIS as necessary. Therefore, this letter does not meet the requirements of 8 C.F.R. §245a2(d)(3)(i).

Despite counsel's assertions on appeal that the director ignored additional documentary evidence submitted in response to the NOID, no such documentation is contained in the file. In addition, counsel does not submit a copy of this response on appeal. Merely alleging that such evidence is sufficient to overcome the basis for the NOID without providing corroborating documentation will not satisfy the burden of proof in these proceedings. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

Most importantly, however, is the fact that most of the documents contained in the record and relied upon by the applicant have been discredited by the affiants themselves. As a result, this casts doubt on the remainder of the applicant's evidence, as discussed above. Even if the affidavits were credible, they would still be insufficient since they omit important information such as the addresses at which they knew the applicant or the basis and source of the knowledge they attest to. Given these discrepancies, 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 from January 1, 1982 through 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that on November 14, 1997, the Whitfield County, Georgia Sheriff's Office arrested the applicant for the charges of Terroristic Threats, a felony, and Criminal Trespass, a misdemeanor. (Case No. [REDACTED]) Due to insufficient evidence and an absence of independent witnesses, the State of Georgia filed a motion to enter a Nolle Prosequi in the case, which was granted by the Superior Court of Whitfield County, Georgia, on September 28, 1998. These charges do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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