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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-02-163-60590

Office: DALLAS

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, Dallas. **The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.**

The director erroneously stated that the applicant failed to provide credible and verifiable evidence of his presence during the required time period from January 1, 1982 through May 4, 1988, although temporary resident status requires that the applicant demonstrate by a preponderance of the evidence that he resided in the United States from before January 1, 1982 through May 4, 1988. The director referred to state records that indicated an employer who had provided the applicant with an affidavit did not start operating as a business until after the requisite period ended.

On appeal, the applicant's attorney stated that the director held the evidence to a higher standard than what the law requires.

An applicant for permanent resident status under Section 1104 of the LIFE Act 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. Section 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 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation and its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-485 Application to Register Permanent Resident or Adjust Status, to Citizenship and Immigration Services (CIS) on March 12, 2002. At part #3 where applicants were asked to list present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group, the applicant stated, "none."

The record includes multiple declarations and other documentation including an affidavit from [REDACTED] Contractor (Assistant Vice President) of [REDACTED] dated June 4, 1990. Mr. [REDACTED] stated that he knows that the applicant worked as a laborer from 1981 to the present. This affidavit does not specifically confirm the applicant resided or worked in the United States during the requisite period. In addition, this affidavit does not conform to regulatory standards for letters from employers. Specifically, the affidavit does not include the applicant's address at the time of employment, whether the information was taken from official company records, where the records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.(d)(3)(i).

The record also includes information indicating Landmark Construction Services Inc. was not registered as a company in Texas until May 19, 1989. This information, without additional evidence confirming the company engaged in business as early as 1981, casts further doubt on [REDACTED]'s ability to confirm the applicant resided in the United States throughout the requisite period. It is noted that the director referred to this information in the Notice of Intent to Deny (NOID) issued on April 24, 2004, giving the applicant an opportunity to respond. The applicant failed to provide additional evidence confirming Landmark Construction's dates of operation, either in response to the NOID or on appeal.

The record also includes a declaration from [REDACTED] dated June 4, 1990. The affiant stated that the applicant resided at the following addresses during the requisite period: [REDACTED], Dallas, Texas from 1981 to June 1986 and [REDACTED], Dallas, Texas from July 1986 to present. The affiant indicated she was the landlord and applicant paid rent to her on a monthly basis with paid bills. The affiant did not include copies of bills in her name for the requisite period.

The record includes a declaration from [REDACTED] dated February 22, 2002. The declarant stated that her brother, the applicant, lived with her at the following Dallas, Texas addresses during the requisite period: [REDACTED] from 1981 to June 1986; and [REDACTED] from July 1986 to January 1993. Ms. [REDACTED] attached a copy of a driver's license listing her date of birth as September 4, 1957. It is noted that the record includes Form I-687 Application for Status as a Temporary Resident signed by the applicant on June 5, 1990. At part #32 where applicants were asked to list each brother and sister, the applicant listed [REDACTED] born on

September 4, 1957. This suggests that [REDACTED] and [REDACTED], the declarant mentioned above, are the same individual.

The record also contains multiple declarations from individuals who failed to confirm the applicant resided in the United States during the requisite period. These include: a declaration from [REDACTED] dated June 2, 1990; a declaration from [REDACTED] dated June 2, 1990; an affidavit from [REDACTED] dated February 21, 2002; an affidavit from [REDACTED] dated February 8, 2002; an affidavit from [REDACTED] dated January 31, 2002; an affidavit from [REDACTED] dated May 18, 2004; an affidavit from [REDACTED] dated May 18, 2004; and an affidavit from [REDACTED] dated May 18, 2004. The affidavits from [REDACTED] and [REDACTED] are also inconsistent with the information provided on Form I-485. Specifically, both affiants indicated they met the applicant at Church of God Munger Place, yet the applicant failed to list this church on Form I-485 when asked to list all affiliations or associations with churches.

The record includes an affidavit from [REDACTED] dated May 18, 2004. The affiant stated that she and the applicant met as neighbors at [REDACTED] in Dallas in September of 1985. This affidavit fails to confirm the applicant resided in the United States at any time other than September 1985.

The record also contains a copy of the applicant's identification card listing a Texas address and dated June 3, 1985. Again, this document fails to confirm the applicant resided in the United States at any other time than 1985.

In denying the application the director erroneously stated that the applicant failed to provide credible and verifiable evidence of his *presence* during the required time period from January 1, 1982 through May 4, 1988, although temporary resident status requires that the applicant demonstrate by a preponderance of the evidence that he *resided* in the United States from before January 1, 1982 through May 4, 1988. The director also referred again to state records that indicated Landmark Construction did not start operating as a business until 1989. Although the director incorrectly stated the requirements according to Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b), it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f).

On appeal, counsel for the applicant stated that the director held the evidence to a higher standard than what the law requires. Specifically, the attorney stated that the director used a more stringent standard than a preponderance of the evidence and did not give any weight to the documents submitted. In addition, the attorney suggested the possibility that Landmark Construction could have operated as a different kind of business entity prior to 1989 and, if so, the Secretary of State in Texas would have no record of that entity's existence. The attorney also stated that he had notified the immigration officer that he had spoken with [REDACTED]. In his conversation with the attorney, [REDACTED] confirmed that he had dealings during the requisite period with [REDACTED] of Landmark Construction, but did not recall the applicant. The attorney explained that the employer affidavit explained that the applicant was working for [REDACTED], a subcontractor of both [REDACTED] and [REDACTED]. It is noted that, 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 (BIA 1980). The applicant has not submitted independent evidence confirming that Landmark Construction existed as an entity during the requisite period, in response to the evidence suggesting the company did not exist until 1989. The applicant also has not submitted evidence, other than the above referenced employment affidavit that fails to conform to regulatory standards, indicating the applicant worked for Landmark Construction during the requisite period.

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the 1981-88 period in the form of an identification card that merely confirms he resided in the United States during 1985. The applicant has submitted affidavits and declarations that fail to conform to regulatory standards, conflict with the applicant's statements, or fail to state the applicant resided in the United States during the requisite period. Specifically, the affidavit from [REDACTED] regarding the applicant's work with Landmark Construction fails to conform to regulatory standards. In addition, [REDACTED]'s ability to confirm the applicant's residence during the statutory period is called into question by evidence suggesting Landmark Construction was not operating until after the requisite period. The declarations and affidavits from [REDACTED]

[REDACTED], and [REDACTED] all fail to confirm the applicant resided in the United States. In addition, the affidavits from [REDACTED] and [REDACTED] are also inconsistent with the information provided on Form I-485.

The applicant submitted two declarations that appear to be from his sister [REDACTED], confirming his addresses in the United States during the requisite period. Although one of the declarations indicated [REDACTED] served as the landlord for the residences and the applicant paid bills to her on a monthly basis, she did not attach copies of bills received in her name at the listed addresses during the requisite period. Lastly, the applicant provided an affidavit from [REDACTED] that merely confirms the applicant resided in the United States in September 1985. Considering the contradictions between information in the submitted declarations and the Form I-485, questions surrounding the applicant's employment with Landmark Construction, and lack of independent documentation to confirm the applicant's residence in the United States outside of the year 1985, the declarations from the applicant's sister are found to be insufficient to meet the applicant's burden of proving by a preponderance of the evidence that he resided in the United States throughout the requisite period.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictory statements contained in the applicant's I-687 application and supporting affidavits, and the applicant's reliance upon documents with minimal probative value or documenting only one year of the requisite time period, 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 the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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