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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]

Office: DALLAS

Date:

OCT 04 2007

MSC 02 141 67690

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. 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 on appeal. The appeal will be dismissed.

The 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 asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant submits copies of previously submitted documentation in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 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).

On a form to determine class membership, which he signed under penalty of perjury on August 21, 1990, the applicant stated that he first arrived in the United States in 1979, when he was approximately nine years old. On his Form I-687, Application for Status as a Temporary Resident, the applicant did not admit to any employment, and stated that he lived at [REDACTED] Texas from 1981 to August 1989.

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

1. A January 20, 2002 statement from [REDACTED] in which he stated that the applicant was his nephew, that he had known him since 1980, and that the applicant resided at [REDACTED]
2. A February 20, 2002 statement from [REDACTED], in which he stated that he began working with the applicant, his nephew, when he was 10 years old, and that he's known the applicant since 1980. [REDACTED] did not state the nature of the work that he did with the applicant, and the applicant listed no employment on his Form I-687 application.
3. A February 20, 2002 statement from [REDACTED] in which he stated that he had known his cousin since 1980, that he had known him all of his life, and that the applicant lived at [REDACTED] in [REDACTED]
4. A January 20, 2002 statement from [REDACTED], in which he stated that he had known his cousin since 1980, that he had known him all of his life, and that the applicant lived at [REDACTED]
5. A February 20, 2002 statement from [REDACTED], in which he stated that he had worked in agriculture and that he "treated" the applicant, his nephew, since 1980.
6. A January 20, 2002 statement from [REDACTED], in which she stated that she met the applicant in 1980 while visiting his aunt in El Paso.
7. An August 13, 1990 notarized statement from [REDACTED] in which he stated that he had known the applicant since 1981, and that the applicant had lived with him at [REDACTED] since that time. In a March 6, 2003 sworn statement, [REDACTED] stated that the applicant was his nephew and that he lived with [REDACTED] from 1982 to 1988. [REDACTED] also stated that the applicant worked with him doing landscaping, yard and agricultural work, and was paid in cash.
8. A January 20, 2002 statement from [REDACTED] in which he stated that he had known the applicant since 1982, and that he visited the applicant at [REDACTED] did not state the circumstances of his initial acquaintance with the applicant.
9. A January 21, 2002 statement from [REDACTED] in which she stated that she had known the applicant since 1983. [REDACTED] did not state the circumstances of her initial acquaintance with the applicant.
10. A February 20, 2002 statement from [REDACTED], in which he stated that he met the applicant while working in agriculture in El Paso in 1983.
11. A January 21, 2002 sworn statement from [REDACTED] in which he stated that he had known the applicant since 1984, that they met while practicing soccer, and that the applicant had resided in Fort Worth since that time. We note that the applicant stated that he lived in El Paso throughout the qualifying period.

12. A January 21, 2002 sworn statement from [REDACTED] in which he stated that he had known the applicant since 1986, when the applicant moved to Fort Worth, and that they met while playing soccer.

Each of these statements indicates that [REDACTED] notarized them. However, with the exception of the statements by [REDACTED] each of the statements indicates that it was "sworn to and notarized" by the notary on January 21, 2001. However, each of them is dated in 2002, some as late as February 20. Further, each of the statements indicates that [REDACTED] translated them on January 18, 2002. This raises questions about the credibility of the statements submitted on the applicant's behalf. Additionally, the record reflects that [REDACTED] assisted the applicant in completing his Form I-687 application.

In response to the director's Notice of Intent to Deny dated May 2, 2004, the applicant submitted a copy of a letter from [REDACTED] New Mexico, in which the office manager, [REDACTED], stated that the applicant was an employee of the company from 1985 through 1988, and that his duties consisted of working with produce. The letter did not indicate whether the information about the applicant's employment was taken from company records and did not state the applicant's address at the time that he worked for the company.

In her Notice of Decision, the director notified the applicant that, when the district office contacted [REDACTED] in an attempt to verify her statement, she stated that the information provided "was taken from other individuals" and that no company records existed. The director further noted that the applicant alleged that he lived in El Paso throughout the qualifying period.

On appeal, counsel asserts that the district office "mistakenly based its decision to deny Appellant's application due to a single apparent inconsistency between one affidavit provided by Appellant's uncle, [REDACTED] and the employment verification letter from [REDACTED]. Counsel asserts that the applicant's uncle "maintained a labor service, consisting of yard work, agricultural work, and landscaping," and that both he and the applicant performed seasonal work for [REDACTED] which was located approximately one hour from El Paso. However, none of these assertions by counsel are supported by documentation in the record. 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). Additionally, as discussed above, the applicant did not claim any employment during the qualifying period.

In this instance, the applicant has submitted twelve statements attesting to his continuous residence in the United States during the requisite period. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the statements submitted by the applicant contain conflicting information regarding his residency and work history. Additionally, six of these statements were from relatives, who are not disinterested parties. Furthermore, the notary's attestation on many of the documents is dated before the individual actually executed the document. The applicant submitted no contemporaneous documentation of his presence and residency in the United States during the requisite period.

Given this absence of contemporaneous documentation and the resolved inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he resided continuously in the United States for the required period.

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