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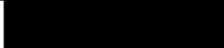
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

OCT 10 2007

MSC-02-134-63460

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:



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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director initially issued a decision on June 4, 2003. She issued an amended Notice of Intent to Deny (NOID) on May 13, 2006 and a final decision on August 14, 2006. In denying the application, the director determined the information and documentation submitted by the applicant were insufficient to overcome the grounds for denial expressed in the Notice of Intent to Deny. Specifically, the applicant's oral and written statements were found to be not credible because they contained inconsistencies.

On appeal, the applicant's attorney attempted to explain inconsistencies in the applicant's statements.

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. See 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 February 11, 2002. With this application, the applicant submitted multiple letters. He included a letter dated September 20, 2001 from [REDACTED] which states the applicant was employed by [REDACTED] Professional Collision Repairs since January 1982 as an automobile mechanic. The letter also lists the applicant's address as [REDACTED]. It is noted that the notary's signature on this letter is dated December 15, 2001, a date that is inconsistent with the date printed at the top of the letter. The notary's stamp also appears to have been altered so that instead of reading "Exp. 09-18-2001," a date that occurred before the notary signature date and before the date that is printed at the top of the letter, the stamp now reads, "Exp. 09-18-2005." These inconsistencies and potential alterations cast doubt on the authenticity of the letter and call into question whether the applicant actually resided in the United States during the requisite period. In addition, this letter does not conform to regulatory requirements for letters from employers. Specifically, the letter does not include the exact period 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.2(d)(3)(i).

The applicant also included a letter from [REDACTED] manager of Apple 1 Transportation Net Work Inc. dated December 1, 2001. In this letter, [REDACTED] confirmed the applicant's residence on 35th Street, and stated that the applicant worked in [REDACTED] garage from November 1986. Again, the notary's signature on this letter is dated December 15, 2001, a date that is inconsistent with the date printed at the top of the letter. This inconsistency casts doubt on the authenticity of the letter and calls into question whether the applicant actually resided in the United States during the requisite period. In addition, this letter does not conform to regulatory requirements for letters from employers. Specifically, the letter does not include the exact period 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.2(d)(3)(i). It is noted that the record also contains a printed receipt from Apple 1 Transportation Network Inc. containing a handwritten order, as proof of the company's existence. However, the receipt spells the word "Network" in the traditional way, in contrast to the spelling "Net Work," used in the letter. This inconsistency calls into question the authenticity of the letter and casts doubt on whether the applicant actually resided in the United States during the requisite period.

The applicant also included photocopies of envelopes containing cancellation date stamps. The dates on the date stamps are illegible. Therefore, these envelopes do not constitute evidence of the applicant's residence during the requisite period.

The record also contains a declaration from [REDACTED]. In this declaration, [REDACTED] stated that the applicant is a good friend of his, the applicant came to visit him and his family in Canada from June 15, 1987 to July 15, 1987 when the applicant left for the United States. This letter does not confirm the applicant resided in the United States prior to July 15, 1987.

The record also includes four documents from [REDACTED]. The first is a form affidavit dated August 9, 1992. In this affidavit, [REDACTED] confirms the applicant resided at [REDACTED] from November 1981 to present. Where the form affidavit indicates the affiant should explain how he is able to determine the date of the beginning of his acquaintance with the applicant in the United States, the affiant stated, "That they met each other of their community gathering, religious, festivals, and each other[s] residence." Since the affiant failed to provide a specific explanation of how he met the applicant, this affidavit is found to lack sufficient detail. In addition, where the form affidavit indicates the affiant should list the longest period during the residence described in which the affiant has not seen the applicant, the affiant stated "1987 June/July."

The record includes an undated affidavit from [REDACTED]. In this affidavit, the affiant stated that he took the applicant to Montreal, Canada on June 6, 1987 in the affiant's motor vehicle. The affiant stated, "When I went to Montreal in late June 7, 1987, I contacted [REDACTED] and he wanted to come back to New York. Then again I took him back and left Montreal on July 13, 1987 at night and crossed the border same way as we did before, we reached New York on July 14, 1987 in the afternoon." This affidavit fails to confirm the applicant resided in the United States during the requisite period. In addition, the affidavit fails to explain the nature of the relationship between the affiant and the applicant, and it does not mention how the affiant came to provide transportation to and from Canada for the applicant. This letter also appears to be inconsistent with the first affidavit from [REDACTED] which implies [REDACTED] did not see the applicant from June to July 1987, although the second affidavit states that [REDACTED] saw the applicant in both June and July of 1987. Lastly, the fact that this affidavit is undated casts some doubt on its authenticity.

The record also includes a letter from [REDACTED] dated August 9, 1992. In this letter, the declarant stated that he has known the applicant since November 1981. The declarant explained that the applicant was known in "the area" as a good auto mechanic and has worked several times on the declarant's car. In 1987 the declarant took the applicant and his brother in the declarant's car to Montreal, Canada. This letter fails to confirm the applicant resided in the United States during the requisite period. In addition, this letter appears to be inconsistent with the first affidavit from Mr. [REDACTED] in which he explains that he met the applicant at community gatherings, religious festivals, and each other's residences, but omits mention of the applicant having worked on [REDACTED] car.

The record includes another letter from [REDACTED] dated January 8, 2003. In this letter, the declarant stated that he has known the applicant since 1981. This letter is nearly identical to the

letter dated August 9, 1992, except that this letter does not mention that the applicant's brother accompanied the declarant and the applicant to Canada. This letter also does not confirm the applicant resided in the United States during the requisite period.

In denying the application, the director determined the information and documentation submitted by the applicant were insufficient to overcome the grounds for denial expressed in the NOID. Specifically, the applicant's oral and written statements were found to be not credible because they contained inconsistencies. The director also questioned the credibility of documents provided by the applicant.

On appeal, the applicant's attorney attempted to explain inconsistencies in the applicant's statements. The attorney's statements include assertions regarding statements the applicant had made. 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, 506 (BIA 1980). The attorney explained that one of the documents from [REDACTED] was notarized by a Notary qualified in Nassau County, but this document was not notarized in Nassau County.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits, letters, and declarations that lack sufficient detail, fail to conform to regulatory standards, fail to confirm the applicant's residence, or conflict with each other. Specifically, the letter from [REDACTED] contains a notary date that is inconsistent with the letter date, does not conform to regulatory standards, and is inconsistent with the store receipt provided by the applicant. The declaration from [REDACTED] does not confirm the applicant resided in the United States prior to July 15, 1987. The first affidavit from [REDACTED] lacks sufficient detail and appears to be inconsistent with the second affidavit from [REDACTED]. The second affidavit fails to confirm the applicant resided in the United States during the requisite period and is undated. The first letter from [REDACTED] fails to confirm the applicant resided in the United States and appears to be inconsistent with [REDACTED] first affidavit. The second letter from [REDACTED] fails to confirm the applicant resided in the United States.

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 supporting affidavits, and the applicant's reliance upon documents with minimal probative value, 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.