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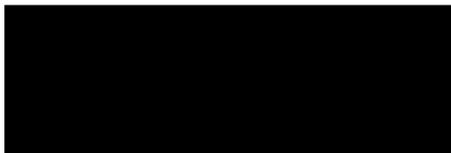
U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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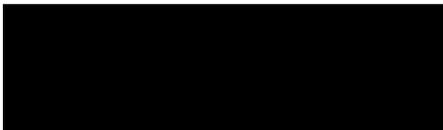
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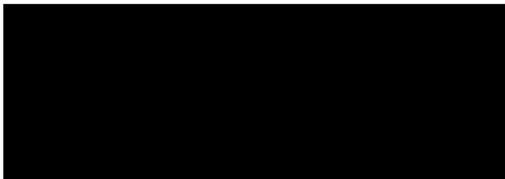
Applicant:



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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

The district director determined that the applicant's testimony was at variance with the information initially provided on his Form I-687 application, thereby casting credibility issues on his claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As such, the director denied the application.

On appeal, counsel asserts that the applicant entered the United States in 1981 and has provided sufficient evidence to establish his residence during the period in question. Counsel contends that at no time did the applicant mean to mislead Citizenship and Immigration Services. Counsel asserts the applicant was "making corrections to his Form I-687" at the time he informed the interviewing officer of all his absences. Counsel argues that the Notice of Intent to Deny made no mention whether the interviewing officer attempted to verify any of the affidavits.

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. 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 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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] of Houston, Texas, who attested to the applicant's residence at [REDACTED] December 1981 to October 1990. The affiant based his knowledge on the applicant working for a friend of his who does painting.
- Affidavits notarized in October 1990, from [REDACTED] and [REDACTED] of Houston, Texas, who attested to the applicant's residence at [REDACTED] May 1982 and June 1982, respectively.
- An affidavit notarized October 30, 1990, from [REDACTED] of Houston, Texas, who met the applicant through the applicant's father in March 1982. The affiant attested to the applicant's residences at [REDACTED]. The affiant based her knowledge on being a neighbor of the applicant at [REDACTED].
- An affidavit notarized October 29, 1990, from [REDACTED] of Houston, Texas, who indicated she met the applicant in May 1983 and attested to the applicant's residences at [REDACTED]. The affiant based her knowledge on being a neighbor of the applicant at [REDACTED].
- An affidavit notarized September 10, 1990, from [REDACTED] of Houston, Texas, who indicated that he met the applicant in September 1981 at the home of the applicant's employer - [REDACTED]. The affiant attested to the applicant's Houston residences at [REDACTED] 1981 to 1987 and at [REDACTED].
- An employment affidavit notarized May 18 (year not indicated) from [REDACTED] who claimed to be a self-employed subcontractor and indicated that the applicant has been in his employ as a laborer since August 1981. The affiant attested to the applicant's residences at [REDACTED].
- An employment affidavit notarized May 18, 1990, from [REDACTED] who claimed to be the owner of a company whose name is indecipherable in Houston, Texas. The affiant indicated the applicant was in his employ as a tire changer at [REDACTED] from January 1983 to April 1983. The affiant attested to the applicant's current residence, [REDACTED], but did not list the applicant's former address during the employment period.
- A notarized affidavit from a friend, [REDACTED] of Houston, Texas, who indicated he and the applicant were roommates from August 6, 1981 to May 6, 1990 at the Hardy residence.
- An affidavit notarized May 19, 1990, from [REDACTED] of Houston, Texas, who indicated he has known the applicant since 1982 or 1983 and attested to the applicant's Houston residences at [REDACTED] and at 1730 Cresline since 1987. The affiant also attested to the applicant's employment as a contract worker for [REDACTED].
- An affidavit notarized September 4, 1990, from [REDACTED] of Houston, Texas, who indicated she met the applicant through the applicant's father in December 1981 and attested to his Houston residences at [REDACTED]. The affiant asserted she is a friend and neighbor of the applicant and sees the applicant approximately every two weeks.
- An affidavit notarized September 6, 1990, from [REDACTED] of Houston, Texas, who indicated he met the applicant at work while employed by [REDACTED] in 1982 and attested to the applicant's Houston residences at [REDACTED].
- Notarized affidavits from [REDACTED] of Houston, Texas, who indicated he met the applicant through the applicant's father in 1981. The affiant attested to the applicant's

residence in the United States since August 1981 and to his absence during September to October 1987. The affiant asserted that he has kept in touch with the applicant for at least eight to nine years.

- An affidavit from an uncle, [REDACTED], who indicated the applicant has been residing with his (the applicant's) father since August 1981 and attested to the applicant's employment with J [REDACTED] as a painter and with [REDACTED]. It is noted that the affiant did not provide either a telephone number or his address.
- Affidavits notarized September 10, 1990, from [REDACTED] and [REDACTED] [REDACTED] Houston, Texas, who indicated they met the applicant in August 1981, attested to the applicant's employment with [REDACTED] and to the applicant's Houston residences at [REDACTED] from 1981 to 1987 and at [REDACTED] since 1987.
- Notarized affidavits from [REDACTED] and [REDACTED] of Houston, Texas, who attested to the applicant's employment with [REDACTED] since September 1981 and to the applicant's Houston residences at [REDACTED] since 1987.

The record contains a notarized affidavit signed by the applicant on June 26, 2002, indicating, in pertinent part, "I have been living in the U.S. since I first entered in 1991. I have become accustomed to life here in the United States and it would be difficult to adjust to live in a country that I have not lived in for eleven years."

In a Notice of Intent to Deny dated October 21, 2003, the applicant was advised of inconsistencies between his applications and oral testimony. At the time of his LIFE interview, the applicant informed the interviewing officer that he had been absent during the requisite period for one week in 1983 or 1984, two weeks during December 1986, one week to get married in January 1987, and one week in October 1987. However, on his Form I-687 application submitted in 1990, the applicant listed only one departure from the United States during September through October 1987. The applicant was also advised of his signed statement of June 26, 2002 and of his failure to provide primary evidence to establish his continuous residence in the United States during the requisite period.

Counsel, in response, submitted copies of the affiants' affidavits that were previously presented along with an affidavit from the applicant who acknowledged the departures indicated in the Notice of Intent to Deny and indicated, in part:

I went to "American Multiservice" to help me fill out my Form I-687 application. The person that helped me fill out my application did not ask me about any departures. They only asked me why INS had denied my application. I told them that INS denied my application because I left the country on or about September or October 1987. They never asked me about any other departures.

I apologized if anything I said was misinterpreted or the result of a mistake. I never intended to mislead anyone.

Counsel indicated the applicant did not know that he had to list all of his departures on the Form I-687 application and therefore when questioned by the interviewing officer, the applicant listed all of his departures. Counsel indicated that the applicant's June 26, 2002 affidavit was a clerical mistake as the applicant "meant to state that he has been living in the United States since 1981."

The statements of counsel and the applicant have been considered. The AAO, however, does not view the affidavits from the affiants as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits 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. Except for the affidavit from [REDACTED] the affidavits from the affiants have little evidentiary weight inasmuch as they do not provide any details regarding the nature of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.

Because [REDACTED] in his affidavit, indicated he was "a friend" of the applicant and the applicant claimed on his Form I-687 application to have a brother also named [REDACTED] it cannot be determined if the affidavit was initiated by the applicant's father, brother or an acquaintance. Furthermore, [REDACTED] indicated he and the applicant were roommates at [REDACTED] from August 6, 1981 to May 6, 1990. However, the applicant indicated on his Form I-687 application to have resided at this address until June 1987.

The employment affidavit from [REDACTED] has little evidentiary weight or probative value as the affiant failed to provide a telephone number or address and, therefore, the affidavit is not amenable to verification by the CIS. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to include the address of [REDACTED]

Counsel's claim that the applicant did not know he had to list all of his departures on his Form I-687 application is not plausible. At Item 35 of the Form I-687 application requests the applicant to list *all* absences from the United States since January 1, 1982. The applicant, in affixing his signature on item 46 of his Form I-687 application, certified that the information he provided was *true* and *correct*. The application does not indicate that anyone other than the applicant completed the application as no information is listed in items 48 and 50 of the application; items 48 and 50 of the application requests the name, address and signature of the person preparing the form. As conflicting statements have been provided, it is reasonable to expect an explanation from the preparer in order to resolve the discrepancy. However, to date, no statement from the alleged preparer has been submitted to corroborate the applicant's statement. Consequently, the applicant's assertion that the application was prepared by someone other than himself cannot be considered as persuasive.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the applicant's statement and the documentation provided by him, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, 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.