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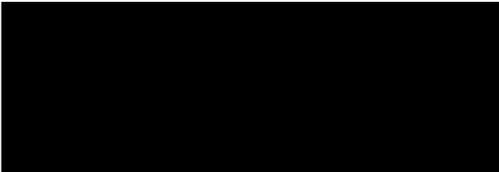


FILE: [Redacted] MSC 02 242 62734

Office: DALLAS

Date: **OCT 29 2007**

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. 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.

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, 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. Specifically, the director determined that the applicant had failed to submit sufficient evidence to establish his presence in the United States prior to 1985.

On appeal, counsel states that the applicant submitted substantial documentary evidence including letters and affidavits from former employers and friends. He asserts that the applicant has met his burden of proof and has established his eligibility for permanent resident status under the LIFE Act by a preponderance of evidence, and further alleges that the director erred by failing to consider the numerous affidavits submitted in support of the application.

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 July 3, 1990, the applicant stated that he first arrived in the United States in October 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 again stated that he first entered the United States in October 1981, and claimed to live at the following addresses in Dallas, Texas during the requisite period:

October 1981 to December 1989:  
January 1990 to Present:



The AAO concurs with the director's finding that the applicant submitted sufficient evidence to establish continuous residence and physical presence in the United States subsequent to 1984. In an attempt to establish continuous unlawful residence since before January 1982 through 1984, the applicant furnished the following evidence:

- (1) Affidavit dated July 4, 1990 from [REDACTED], butcher/chef, claiming the applicant worked for him as a kitchen assistant in Dallas, Texas from November 1981 until July 1984.
- (2) Employment letter from [REDACTED] Coordinator for [REDACTED] [REDACTED] Texas, who states that the applicant worked for the company from August 10, 1984 through October 21, 2005 as a Steward in the Food and Beverage department.

- (3) Affidavit dated May 15, 2002 from [REDACTED] sister of the applicant, in which she states that the applicant resided with her at [REDACTED] from February 1981 until 1992, at which time they moved to [REDACTED]. This statement contradicts the applicant's claims that (1) he first entered the United States in October 1981; and (2) that he resided at [REDACTED] a October 1981 through December 1989. The applicant submitted no evidence to explain the inconsistencies in [REDACTED] statement.
- (4) Affidavit dated May 11, 2002 from [REDACTED] stating that she has known the applicant since 1981 and met him at [REDACTED]. She further states that at the moment, they work for the same company. She does not state the basis of her claimed knowledge of the applicant, other than they are friends.
- (5) Affidavit dated June 27, 1990 from [REDACTED] z. stating that he has known the applicant since 1981 and that the applicant lived at [REDACTED] from October 1981 until December 1989. The affiant does not state the basis of his claimed knowledge of the applicant, other than they are friends and neighbors. Furthermore, the affiant's claims directly contradict the affidavit of [REDACTED] the applicant's sister, who claims the applicant resided with her from February 1981 until 1992 at [REDACTED].
- (6) Affidavit dated May 15, 2002 from [REDACTED], stating that he has known the applicant since 1982 and that he met him "when I was living at [REDACTED] Texas, [the applicant] was living at this same apartments." [sic.]. The applicant fails to clarify whether they lived in the same apartment or in the same apartment complex, and further fails to clarify what year or years he refers to the applicant residing at [REDACTED]. This is important, since the applicant claims that he did not move to [REDACTED] until January 1990.
- (7) Affidavit dated May 9, 2002 from [REDACTED], who states that he has known the applicant since July 1982, and first met him when he had a party at his house at [REDACTED]. The affiant does not state the basis of his claimed knowledge of the applicant, other than they are friends and that they have worked together at unspecified businesses over the years and that they currently work together.
- (8) Affidavit dated May 8, 2002 from [REDACTED], who claims that he has known the applicant since December 1982 when he met him while walking in "Colorado Park," a park located near his home.
- (9) Affidavit dated June 30, 1990 from [REDACTED], who claims that the applicant maintained a residence at [REDACTED] October 1981 to present. The affiant briefly indicates that his relationship to the applicant is roommate and landlord. This claim, however, contradicts the affidavit of [REDACTED] who indicates that she resided with the applicant from February 1981 through 1992 at [REDACTED].
- (10) Affidavit dated June 27, 1990 from [REDACTED], in which he states that the applicant resided at [REDACTED] October 1981 until December 1989. The affiant fails to state the basis for his knowledge of this information, and merely claims that he sees the

- applicant everyday "because he is my [friend]." Moreover, this statement contradicts the affidavit of [REDACTED] who claims that the applicant lived with her from February 1981 until 1992 at [REDACTED]
- (11) Affidavit dated April 25, 2002 from [REDACTED], who claims that he has known the applicant since December 1982 when he moved to the apartment complex where the affiant was residing at the time. The affiant does not indicate to which apartment complex he refers, nor does he provide any additional information regarding the basis of his claimed knowledge of the applicant. Furthermore, this statement again raises questions since it implies that the applicant moved into the affiant's apartment complex in December 1982, although the applicant claims he resided continually at [REDACTED] from October 1981 until December 1989.
  - (12) Affidavit dated May 1, 2002 from [REDACTED] who claims that he met the applicant at [REDACTED], located in Dallas, Texas, in December 1987.
  - (13) Affidavit dated May 2, 2002 from [REDACTED] claiming that he has known the applicant since 1986. He claims that while working for [REDACTED] in Plano, Texas, the applicant arrived looking for a job and they became friends.
  - (14) Affidavit dated May 2, 2002 from [REDACTED] who states that he has known the applicant since October 1987, when the applicant was residing at [REDACTED]. This contradicts the applicant's claim that he resided at [REDACTED] in 1987.

On May 3, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through 1984. The applicant was afforded the opportunity to submit additional evidence in support of the application.

In response, counsel for the applicant submitted a letter dated May 25, 2004, alleging that the seven affidavits and one letter of employment, previously submitted, clearly established that the applicant had continually resided in the United States since before January 1, 1982 through 1984. No new evidence was submitted.

The director denied the application on March 22, 2005, noting that while the evidence in the record supported a finding that the applicant was present in the United States subsequent to 1984, there was insufficient evidence to show that he was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through 1984. Although the director noted the applicant's numerous affidavits of acquaintance and work letters, the director noted there was no evidence of the applicant's entry prior to January 1, 1982 and no evidence of his continued presence in the United States through 1984.

On appeal, counsel for the applicant asserts that the applicant satisfied his burden of proof by a preponderance of the evidence, and specifically alleges that the director erred in failing to consider the affidavits and employment letters in the record. Upon review, the AAO concurs with the director's decision.

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. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims he entered the United States in October 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. The applicant provided a affidavit from [REDACTED] his alleged employer as of November 1981, in support of the contention that he entered the United States prior to January 1, 1982. The affidavit submitted in support of this claim, however, does not meet the regulatory requirements. Specifically, in lieu of an employment letter, CIS will accept an affidavit form-letter stating that the alien’s employment records are unavailable and why they are unavailable, as well as the employer’s willingness to come forward and give testimony as requested. *See* 8 C.F.R. § 245.a2(d)(3)(i)(F). The affidavit of [REDACTED] does not state this information.

Additionally, the affidavit from [REDACTED] sister of the applicant, further contradicts the applicant’s claimed entry into the United States in October 1981, since she claims that he resided with her from February 1981 until 1992 at [REDACTED]. Not only does this statement contradict the applicant’s claimed date of first entry, it further contradicts the applicant’s claimed address during this period. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant relies on numerous other affidavits as well as an employment letter from [REDACTED] Records Coordinator for [REDACTED], in support of the claim that he unlawfully and continually

resided in the United States during the requisite period. This employment letter, which claims that the applicant worked for the company from August 10, 1984 to October 21, 1985 is insufficient and fails to satisfy the regulatory requirements. Although written on employer letterhead, the letter lacks some of the necessary information required by 8 C.F.R. § 245a.2(d)(3)(i), such as whether or not the information in the letter was obtained from official company records or the location of company records and whether CIS could have access to those records.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintances have been submitted, there are several unresolved inconsistencies contained therein which the applicant failed to clarify. These inconsistencies 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.

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.

The affidavits submitted in support of this application fall far short of meeting the above criteria. The affidavit of [REDACTED], the applicant's sister directly contradicts the applicant's claims under oath that he first entered the United States in October 1981. She claims that the applicant lived with her from February 1981 until 1992 at [REDACTED], an address at which the applicant never claims to have resided. The affidavit of [REDACTED], who claims that he has known the applicant since December 1982, implies that the applicant moved into the affiant's apartment complex in December 1982, although the applicant claims he resided continually at [REDACTED] from October 1981 until December 1989. The applicant provided no independent evidence to clarify these inconsistencies. As previously stated, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. 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. *Id.* at 591.

Finally, the remainder of the affiants merely claim to be friends of the applicant, but fail to specifically articulate the origin of the information to which they attest or the basis for their acquaintance with him. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Given 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 since before January 1, 1982 through 1984. Therefore, 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.