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FILE: [REDACTED] Office: DALLAS Date: SEP 06 2007
MSC 02 243 68902

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. 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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel argues that the director failed to give sufficient weight to the evidence provided. Counsel asserts that in addition to affidavits from individuals who knew the applicant during the requisite period, the applicant provided "potentially incriminating employment letters from employers who worked him full time while he was a minor, which violates child labor laws." Counsel argues that the director has not pointed to any particular lack of credibility or inconsistency, but has instead chosen to simply ignore all secondary and primary evidence. Counsel provides copies of documents previously submitted 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. 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 Dallas, Texas, who attested to the applicant's Dallas residences at [REDACTED] from February 1981 to November 1986 and at [REDACTED] since November 1986. The affiant indicated he was an ex-employer and a friend of the applicant.
- An additional notarized affidavit from [REDACTED] who indicated the applicant was in his employ as a landscaper from February 1981 to February 1987.
- A notarized affidavit from [REDACTED] of Grand Prairie, Texas, who attested to the applicant's employment as an electrician helper since 1987.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated he has been acquainted with the applicant since February 1981. The affiant asserted he met the applicant through [REDACTED] and sees the applicant at church every Sunday.
- A statement and a notarized affidavit from [REDACTED] of Dallas, Texas, who indicated he met the applicant in 1983 while the applicant was residing with his [the applicant's] brother, [REDACTED] Dallas, Texas. The affiant asserted he was a neighbor of the applicant, sees him twice a week and attested to the applicant's moral character.
- An undated statement from [REDACTED] of Dallas, Texas, who indicated he has known the applicant since 1983. The affiant asserted he was a co-worker of the applicant and remained good friends since 1983.
- An undated statement from [REDACTED] of Dallas, Texas, who indicated the applicant resided with him from March 1982 to October 1982 at [REDACTED] Texas.
- A statement dated January 20, 2002, from [REDACTED] of Dallas, Texas, who indicated he has known the applicant since 1982. The affiant asserted he was a co-worker of the applicant and attested to the applicant's moral character.
- A statement dated December 19, 2001, from [REDACTED] of Irving, Texas, who indicated she met the applicant through her daughter in 1982. The affiant asserted since that time the applicant has occasionally visited her residence.
- A statement dated December 18, 2001, from [REDACTED] of Richardson, Texas, who indicated she met the applicant at a party in 1982 and have remained good friends since that time.

The applicant indicated on his LIFE application that he had been arrested for driving without a license in August 1989 in Mesquite, Texas and in September 2001 in Dallas, Texas.

The director issued a Form I-72 dated June 20, 2003, which requested the applicant to submit the police reports and final court dispositions for all his arrests. The applicant, however, failed to respond to the notice.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by Citizenship and Immigration Services (CIS). The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant is ineligible for the benefit being sought as he has failed to provide the court dispositions for the above arrests necessary for the adjudication of the application.

In a Notice of Intent to Deny issued on April 17, 2004, the applicant was advised of his failure to comply with the Form I-72. The applicant was also advised that his application "did not contain any evidence other than three affidavits," and that he had failed to provide credible and verifiable evidence to establish his presence during the requisite period. The applicant was granted 30 days in which to submit additional evidence. The applicant, however, failed to respond to the notice.

The director, in denying the application, noted although the applicant was ten years of age at the time he entered the United States, no school, medical or church records had been provided.

On appeal, counsel provides a copy of the legacy Immigration and Naturalization Services (INS) memorandum dated February 13, 1989, which provided the following guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act (enacted as part of the Immigration Reform and Control Act of 1986, or "IRCA"):

In those applications where the only documentation submitted is affidavits, if the affidavits are credible and verifiable, are sufficient to establish the facts at issue and there is no adverse information, the application shall be approved. If found insufficient or not credible, attempts to verify the authenticity of the information should be made ...

The AAO agrees that the 1989 legacy INS memorandum provides valid guidance for adjudicating legalization applications under section 1104 of the LIFE Act. Applying that guidance in the instant case, however, the AAO does not view some of the affidavits discussed above 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. The applicant has put forth contradicting and inconsistent documentation for which no explanation has been provided. Specifically:

1. [REDACTED] in his affidavit, attested to the applicant's residence at [REDACTED] Few from February 1981 to November 1986. However, this affidavit contradicts the affidavits of [REDACTED] and [REDACTED] who attested to separate addresses for the applicant during this period.
2. [REDACTED] in his affidavit, attested to the applicant's residence at [REDACTED] during 1983. However, this address does not correspond with any addresses listed on the applicant's Form I-687 application. In addition, [REDACTED] indicated that the applicant resided with the applicant's brother, [REDACTED] during this period. No attestations, however, have been provided by any family member of the applicant to either to corroborate [REDACTED] affidavit or to establish the applicant's continuous residence and physical presence in the United States during the requisite period.
3. [REDACTED] in his affidavit, indicated the applicant resided with him at [REDACTED] from March 1982 to October 1982. However, this address does not correspond with any address listed on the applicant's Form I-687 application.
4. The remaining affiants all claimed to have known the applicant at some point during the requisite period, but provide no address for the applicant.
5. The applicant has put forth two Form I-687 applications; one dated May 31, 1990 and the other dated November 17, 1993. In his initial application, the applicant listed residence at [REDACTED] Few from February 1981 to November 1986; however, in the latter application, the applicant amended his claim to indicate residence at [REDACTED] from January 1981 to March 1987. In addition, in the latter application, the applicant did not claim any employment during the requisite period.

The AAO does not regard these documents as "sufficient to establish the facts at issue," as the 1989 memorandum directs.

As the applicant was a minor, it is conceivable that he would have been residing with an adult during the period in question. [REDACTED] affidavit attesting to the applicant's residence with a brother has been discredited. The applicant's failure to provide the name of the individual he resided with along with an attestation from said individual raises serious questions about the credibility of his claim and the authenticity of the affidavits submitted.

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 documentation provided by the applicant, 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.