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U.S. Citizenship
and Immigration
Services

22

[Redacted]

FILE: [Redacted]
MSC 02 327 60016

Office: DALLAS

Date: SEP 07 2007

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 asserts that the director did not place any weight on the evidence submitted to support the applicant's continuous residence in the United States during the requisite period. 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 argues that is no indication the director made any genuine attempt to verify the information submitted.

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 throughout the application process:

- Notarized affidavits from [REDACTED] and [REDACTED] of Dallas, Texas, who indicated they have known the applicant since 1981 and attested to the applicant's moral character.
- Notarized affidavits from his father, [REDACTED] of Dallas, Texas, who attested to the applicant's Dallas residence at [REDACTED]. The affiant asserted that he supported the applicant from February 1981 to November 1984 as he was not employed during this time-period.
- A notarized affidavit and a statement from [REDACTED], Texas, who indicated the applicant was in his employ as a painter from January 1985 to March 1987 and the applicant received his wages in cash.
- An affidavit notarized, and a statement dated August 27, 1990 from [REDACTED] who attested to the applicant's employment at [REDACTED] Co. in Dallas, Texas from May 1987 to August 1990 and indicated the applicant received his wages in cash. The affiant attested to the applicant's Dallas residence at [REDACTED].
- A medical receipt from [REDACTED] a medical doctor in Dallas, Texas, with indecipherable appointment dates.
- A notarized affidavit from an acquaintance, [REDACTED] of Dallas, Texas, who indicated he has personally known the applicant since October 1981 and that the applicant worked part-time "for our company" from October 1981 to January 1984.

On March 21, 2003, a notice was issued to the applicant advising him that because his fingerprints were illegible for the purpose of conducting a FBI criminal background check, he was to provide a police clearance letter from every jurisdiction he had resided in the United States. The record does not indicate a response was received prior to the issuance of the Form I-72.

At the time of his LIFE interview, the applicant was issued a Form I-72 dated June 19, 2003, which requested the applicant to submit: 1) police report(s) and court disposition(s) for all arrests including his arrest in September 1998 in Highland Park, Texas; 2) a police clearance letter; and 3) evidence to establish his continuous residence in the United States during the requisite period. The applicant, in response, only submitted a letter dated June 25, 2003 from a representative of the City of Dallas Municipal Court indicating that records are not maintained prior to 1998.

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).

On June 10, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to submit all of the requested documentation outlined in the Form I-72. The director noted that the applicant had submitted only "form-letter style affidavits as proof of his presence." The applicant was advised that he had failed to provide credible and verifiable evidence of his presence during the requisite period. The record does not reflect that a response was received prior to the issuance of the director's Notice of Decision dated March 22, 2005.

In denying the application, the director noted that the applicant had failed to submit evidence such as school, church or medical records in attempt to establish his entry and continuous presence in the United States.

On appeal, counsel contends that the applicant submitted a response to the Notice of Intent to Deny and provides copies of said response. Specifically:

- A letter dated June 30, 2004 from the applicant's former representative, who indicated that the applicant was 11 years at the time of his entry into the United States and resided with his father, [REDACTED] at [REDACTED] for four years, and then resided with relatives at [REDACTED]. The representative indicated due to his young age the applicant was having difficulty gathering credible evidence, but the applicant "helped out in construction to earn a living but could not legally work like an adult."
- A notarized affidavit from [REDACTED], Texas, who indicated that he was a co-worker of the applicant's father, [REDACTED] and attested to the [REDACTED]'s employment at Gene McDonald Machine Shop in Dallas, Texas from May 1980 to December 1980. The affiant asserted that he residing with [REDACTED] at [REDACTED] as from May 1980 to May 1983 and met the applicant in March 1981.
- A letter dated June 21, 2004, from [REDACTED], Texas who indicated that he has known the applicant since 1988 and has employed the applicant at his home in several construction jobs.
- A letter from a representative of [REDACTED], Texas, who attested to the employment of the applicant's father, [REDACTED] from 1980 to 1986 and to his residence at [REDACTED].
- A statement dated June 25, 2004 from [REDACTED] a medical doctor, who indicated that the applicant's first appointment was approximately in 1990.

On appeal, counsel asserts that the applicant did not attend school when he arrived in the United States, but "went to work for a friend, [REDACTED] completing odd jobs." Counsel claims that the applicant attended an after school program that taught English as a second language, "but DISD did not and does not maintain records for enrollment in after-school programs." Counsel states that although the applicant attended church, he did not retain records of his attendance. Counsel asserts that the applicant did in fact submit verification of his visits to a doctor's office in Dallas, Texas in 1982. Counsel submits:

- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicates he met the applicant through the applicant's father in March 1981 and attests to the applicant's moral character.
- A notarized affidavit from [REDACTED] who indicates he has personally known the applicant since 1982 and first met the applicant "at an employment in Dallas, Tx. that we both were working for." The affiant indicates he has remained in contact with the applicant since that time.
- A notarized affidavit from [REDACTED] who indicates she met the applicant through her family in Dallas, Texas in January 1982, and attests to the applicant's character.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicates he has known the applicant since January 1982. The affiant asserts he and the applicant were on the same soccer team and is currently a co-worker of the applicant.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicates he has known the applicant since he was a child in Mexico and met the applicant again in the United States in 1982. The affiant asserts he has maintained a friendship with the applicant since 1982.
- A notarized affidavit from [REDACTED] Dallas, Texas, who indicates he first met the applicant in Dallas, Texas, in March 1981. The affiant asserts he resided with the applicant for one year at [REDACTED], Texas and has remained in close contact with the applicant since that time.

- An additional notarized affidavit from [REDACTED] who reasserts the veracity of [REDACTED]'s employment at Gene McDonald Machine Shop, but claims he does not recall the years of employment. The affiant asserts he and [REDACTED] z resided at [REDACTED]s, Texas from May 1980 to approximately October 1981, and [REDACTED] brought the applicant to live with them sometime in 1981, but he does not recall the exact month.

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. The affidavits from [REDACTED] and [REDACTED] attested to the applicant's employment from October 1981 to January 1982 and during 1982, respectively. However, in his affidavit, the applicant's father indicated that the applicant had no employment during this time-period and the applicant did not claim any employment on his Form I-687 application during this time-period.
2. [REDACTED], in his initial affidavit, indicated the applicant's father, [REDACTED] resided with him at [REDACTED] and that the applicant commenced residing at this address in March 1981. However, in his affidavit, the applicant's father did not claim this address as the applicant's place of residence during 1981 to 1983. In addition, the applicant did not claim residence at this address on his Form I-687 application.
3. The applicant's former representative asserted that the applicant resided with his father at [REDACTED] for four years and then with relatives at [REDACTED]. However, in his affidavit, the applicant's father indicated that the applicant resided at [REDACTED] since February 1981, and the applicant did not claim residence at [REDACTED] on his Form I-687 application.
4. Counsel's assertion that the medical receipt from [REDACTED] reflected treatment rendered to the applicant on February 2, 1982 and March 5, 1982 is not supported by the record. [REDACTED] asserted in his statement dated June 25, 2004 that the applicant's first appointment was approximately in 1990. As such, the medical receipt raises serious questions to their authenticity.
5. [REDACTED] claimed to have known the applicant in 1981 and 1982, but provided no address for the applicant during the period in question.

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

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). The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). 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.

Finally, it is noted the record reflects that on November 10, 1991, the applicant was apprehended at Del Rio, Texas under the alias [REDACTED] for alien smuggling. The final outcome is unknown.

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