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U.S. Citizenship  
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FILE:  Office: DALLAS Date:

MSC 01 347 60115

SEP 11 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. 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 sustained.

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 Citizenship and Immigration Services (CIS) should have issued a Form I-72 to notify the applicant of the specific adverse factors it intended to consider prior to denying the application. Counsel argues that the director did not consider all the evidence or give proper weight to the evidence 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Lease/purchase agreements entered into on February 6, 1983 and July 3, 1985 between the applicant and Welborne's in Dallas, Texas. The agreements listed the applicant's Dallas address as [REDACTED]
- A lease/purchase agreement entered into on August 4, 1987 between the applicant and Welborne's in Dallas, Texas. The agreement listed the applicant's Dallas address as [REDACTED]
- Notarized affidavits from [REDACTED] of Dallas, Texas, who indicated he has known the applicant since December 1982 and attested to the applicant's character.
- An affidavit notarized May 1, 1990, from [REDACTED] of Manhattan Laundry & Dry Cleaning, Inc. in Dallas, Texas, who attested to the applicant's part-time employment since September 1985. The affiant asserted that the applicant does odd jobs, repairing equipment and cleaning up and receives his wages in cash.
- A notarized affidavit from [REDACTED], pastor of Asamblea Apostolica De La (indecipherable) En Cristo Jesus in Dallas, Texas, who indicated the applicant has been a member of its parish since September 1981.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated that the applicant was in his employ as a part-time contract labor from August 1981 to September 1985. The affiant asserted that the applicant received his wages in cash.
- Notarized affidavits from [REDACTED] of Garland, Texas, who attested to have known the applicant since October 1981. The affiant asserted the applicant "has been my friend and I regard him with high esteem."
- Affidavits notarized May 29, 1990 and August 18, 2001, from [REDACTED] of Dallas, Texas, who indicated the applicant resided at her Dallas residences at [REDACTED] from September 15, 1981 through June 30, 1987, and at [REDACTED] from July 2, 1987 to June 1994. As evidence of the affiant's residence in 1987, the applicant provided lease contracts in affiant's name entered into on July 2, 1987 and December 22, 1987 for the apartment on [REDACTED]
- A notarized affidavit from [REDACTED] of Lubbock, Texas, who indicated she has known the applicant since January 1982 and attested to the applicant's character.

At the time of his LIFE interview, the applicant also submitted several photographs. The photographs, however, have no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken in the United States and during the requisite period.

On May 2, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the lease contracts did not list his name and he had failed to provide credible and verifiable evidence to establish his presence in the United States during the requisite period.

Counsel, in response, indicated that at the time of the applicant's LIFE interview, the applicant indicated in a sworn statement that he had no further evidence of his residence to provide. Counsel asserted that the interviewing officer noted that the applicant "appeared to be a credible applicant, and that his fluency in English supported his claim to lengthy residence in the United States." Counsel argued that there was no indication the affidavits had been considered or that any attempts had been made to verify the information submitted. Counsel further argued that the director provided no specific reasoning to explain why she questioned the credibility of the secondary evidence submitted. Counsel asserted that the documentation submitted clearly established by a preponderance of the evidence that the applicant resided in the United States during the requisite period. Counsel submitted:

- An additional notarized affidavit from [REDACTED] along with her spouse [REDACTED] who reaffirmed the applicant's residence at their home from September 1981 to June 1981 at [REDACTED], and from July 1987 to June 1994 at [REDACTED]
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated he has known the applicant since September 1981 and attested to the applicant's character.
- A notarized affidavit from [REDACTED] of Carrollton, Texas, who indicated she has known the applicant since July 1983 and attested to the applicant's character.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated she has known the applicant since September 1986 and attested to the applicant's character.

The director, in denying the application, noted that in an attempt to verify the applicant's employment with [REDACTED], CIS telephoned and spoke with [REDACTED]. [REDACTED] indicated that he did not remember the applicant and that if the applicant had worked for him for five years he would have remembered him. The director also noted that although [REDACTED] submitted rental agreements, they did not list the applicant's name. The director determined if the applicant was a full-time residence at the premises, his name should have been listed.

On appeal, counsel asserts that obtaining evidence from 25 years ago is extremely difficult and many businesses and employers do not keep records that old. Counsel asserts that contrary to the denial notice, the applicant did provide substantial evidence of his physical presence and continuously resided in the United States during the requisite period. Namely: 1) the lease/purchase agreements entered into between February 1983 and June 1988, which listed the applicant's address at the time of purchase that correspond with the time periods the applicant reported to have resided at each address; and 2) ten sworn affidavits from family, friends, acquaintances, employers and a pastor. Counsel asserts that all of the evidence provided is verifiable because each document includes contact information. Counsel asserts that the pastor's letter provides sufficient indicia of authenticity as it contains several of the attributes required under the regulation.

However, the letter from [REDACTED] raises questions to its authenticity as the applicant indicated on his Form I-687 application that he was *not* affiliated with any religious organization during the requisite period. Furthermore, the letter has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests.

Regarding the applicant's name not appearing on the lease contracts, counsel asserts that it is entirely possible for an individual to live with a family member and not be on the lease agreement, especially when the individual is in the United States without a social security number, identification and without legal status.

Regarding the applicant's employment with [REDACTED] counsel asserts, in part:

... the truth of the matter is that [REDACTED] was interviewed telephonically almost 20 years after the last time that appellant worked in his office. Moreover, appellant was a part-time employee, never working more than 25 hours per week, who was paid in cash. In addition, appellant worked in the evenings, cleaning [REDACTED] office, at a time when he was not likely to encounter [REDACTED] on a daily basis. Therefore, based on the length of time, the type of employment, and the method of payment, it is unlikely that [REDACTED] would recall appellant or have records that would refresh his recollection of his employee.

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 or the applicant afforded the opportunity to submit the specific additional evidence required, as appropriate. Such additional evidence may appropriately include documents or further affidavit evidence to supplement or explain why no other evidence is available.

Counsel asserts, in the instant case, there is only one piece of information indicating that CIS made any attempt to verify the information provided. Counsel asserts, in part:

However, there is no indication in the denial letter that any of the other numerous resources provided by appellant as references were contacted or consulted, as, according to the 1989 memorandum, any such attempts to verify information "shall be fully documented" and any verification attempts that suggest information is not credible shall be explicitly cited.

\* \* \*

Simply because an employer cannot remember a part-time employee more than 20 years after the employee left a position does not mean that the employee was not present in the United States during that period of employment.

Applying this guidance in the instant case, the AAO does view the documents 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 statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. Furthermore, counsel's contention that the applicant's inability to produce additional evidence of residence for the period in question was the result of the passage of time is considered to be a reasonable explanation in these circumstances.

In this instance, the applicant submitted evidence which tends to corroborate his claim of residence in the United States during the requisite period. The applicant provided affidavits from individuals, all whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The district director has not established that the information in these affidavits was inconsistent with the claims made on the application, or that such information was false. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

**ORDER:** The appeal is sustained.