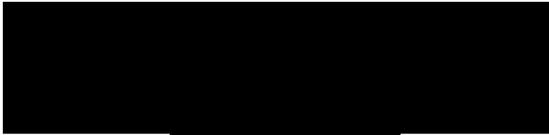




U.S. Citizenship
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FILE: [REDACTED] Office: DALLAS Date: SEP 25 2007
MSC 02 204 62965

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: Self-represented

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.

Although the record contains two Forms G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] and [REDACTED] of Servicios [REDACTED] to act on behalf of the applicant, the individuals and Servicios [REDACTED] are no longer recognized as authorized or accredited representatives pursuant to 8 C.F.R. § 292.1(a).¹

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, the applicant asserts because he was 14 years old when he entered the United States in 1981, he is unable to gather additional evidence to establish his continuous residence in the United States during the requisite period. The applicant provides an affidavit from a brother in support of his 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.

¹ See <http://www.usdoj.gov/eoir/statspub/raroster.htm> for the list of accredited organizations and representatives.

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:

- Affidavits notarized June 25, 1993 and April 2, 2002, from a brother, [REDACTED] of Dallas, Texas, who attested to the applicant's 1981 entry into the United States.
- An affidavit notarized September 15, 1990 from an acquaintance, [REDACTED] of Dallas, Texas, who attested to the applicant's Dallas residence from January 1982 to May 1988 at [REDACTED].
- An additional affidavit notarized June 25, 1993, from [REDACTED], who indicated that he has known the applicant for ten years and attested to the applicant's absence from the United States during May and June 1987.
- An additional affidavit notarized April 15, 2002, from [REDACTED] who indicated he has known the applicant for the last 20 years. The affiant asserted that he has remained close friends with the applicant during this time and attested to the applicant's May to June 1987 absence from the United States.
- An affidavit notarized September 15, 1990, from a subcontractor, [REDACTED] of Dallas, Texas, who indicated that the applicant has been in his employ as a carpet helper since January 10, 1982. The affiant asserted official employment records were not maintained.
- An additional affidavit notarized April 15, 2002, [REDACTED] who attested to the applicant's employment with him as a carpet installer from November 1981 to February 1990.
- A statement dated April 5, 2002, from [REDACTED], of Dallas, Texas, who indicated that the applicant was seen in the clinic for medical problems on December 1 and 12, 1986.

The director issued a Form I-72 dated June 13, 2003, requesting that the applicant submit evidence of his residence in the United States during the requisite period. In response, the applicant asserted he was unable to obtain the information and requested that the evidence currently in his record be considered.

On April 30, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to comply with the Form I-72 and of his failure to provide evidence of his presence in the United States during the requisite period. The applicant, in response, submitted several envelopes postmarked in June, October, November and December 1987 and February 1988

The director, in denying the application, noted that the postmarked envelopes only established the applicant's presence in the United States in 1987 and 1988. The director determined that the employment letters submitted with the applicant's application did not contain sufficient evidence to establish his presence in the United States during the requisite period.

On appeal, the applicant asserts, in part:

My oldest brother was already living here so I came to live with him and he was the one responsible to take care of me. While under his case I was working and my brother was the one who paid the rent, all the utilities bills, and phone bill all were in my brother's [sic] name.

Anything and everything I purchased was purchased under my brother name which is [REDACTED]. All money orders we purchased were purchased in [REDACTED] and send to my parents Mexico.

The applicant submits an affidavit from his brother, [REDACTED] who indicated the applicant resided with him when he arrived in the United States in 1981 and has maintained continuous residence in the United States since that time. The affiant asserts, in part:

When my brother [the applicant] came to work here all the money and purchased [sic] that we made bills, that had to be paid were paid and purchased in my name as [the applicant] was just a kids [sic] at that time. 1981 to 1986 are the years in question that he has not one paper of proof is because of him being a minor I was the one who pay and purchased what we needed in my name. Money order that we send to our parents in Mexico were send in my name.

The statements of the applicant and his brother on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. Due to the applicant's age at the time he claimed to have entered the United States, his inability to submit additional contemporaneous documentation of residence is not found unduly implausible. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period as he has presented contradictory and inconsistent documents, which undermines his credibility.

In his previous two affidavits, [REDACTED] made no mention of the applicant residing with him during the requisite. However, upon the denial of the applicant's application, the affiant amends his affidavit to indicate the applicant resided with him during the requisite period. The affiant claims the applicant resided with him, but fails to provide the address during the period in question. The affidavits from the applicant's brother must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party.

[REDACTED] in his affidavit, attested to the applicant's residence at [REDACTED] from January 1982 to May 1988. As the applicant was a minor, it is conceivable that the affiant would have mention whom the applicant was residing with. The affiant, however, makes no mention of the applicant's residence with his brother, [REDACTED].

[REDACTED] indicated in his initial affidavit that the applicant's employment commenced January 1982. However, in his subsequent affidavit, the affiant amended his statement to indicate the applicant's employment commenced in November 1981. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from the affiant has been submitted to resolve his contradicting affidavits. As such, [REDACTED] affidavits have little probative value or evidentiary weight.

The statement from [REDACTED] may only serve to establish the applicant's presence in the United States on December 1 and 12, 1986, it does not imply or affirm continuous residence.

The envelopes postmarked in November 1987 and February 1988 raise questions of doubt as the applicant did not claim residence at this location [REDACTED] on his Form I-687 application.

It is noted that the record contains an additional Form I-687 application that lacks the applicant's signature. The addresses listed on the unsigned Form I-687 application during the requisite period do not coincide with the addresses listed on the Form I-687 application signed by the applicant on September 16, 1990.

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.

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