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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CHICAGO Date: **APR 23 2008**
MSC 02 227 60935

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

 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, Chicago, Illinois, 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 preponderance of the evidence establishes that the applicant was in the United States during the requisite period. Counsel argues that the individual who issued the Notice of Decision had no opportunity to assess the veracity of the applicant under oath and the decision lacks detail in why the documents provided “do not meet the criteria.”

It is noted that the director, in denying the application, did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- An international money order issued on June 4, 1987, from Security Pacific National Bank in Los Angeles, California.
- Several earnings statements issued during the periods ending November 23, 1986, through August 16, 1987, from El Lugar in Laguna Beach, California.
- Several PS Form 3806, Receipt for Registered Mail, dated in May 1987 through July 1987.
- An airline ticket issued on August 5, 1985, from Los Angeles to Chicago.
- Several photographs.
- A notarized affidavit from an acquaintance, [REDACTED] of Melrose Park, Illinois, who attested to the applicant's residence in the United States since 1978. The affiant also attested to the applicant's September 1987 to October 1987 departure from the United States.
- An affidavit notarized June 30, 1993, from [REDACTED] a farm labor contractor in Stockton, California, who indicated that the applicant was in his employ as a seasonal agricultural worker laboring in the vineyards and orchards from April 8, 1981, to September 21, 1981; January 5, 1982, to October 28, 1982; January 14, 1983, to October 25, 1983; January 16, 1984, to November 5, 1985; January 19, 1985, to September 30, 1985; and January 8, 1986, to October 27, 1986.
- A notarized affidavit from an acquaintance, [REDACTED] of Chicago, Illinois, who attested to the applicant's residence in the United States since 1980. The affiant also attested to the applicant's September 1987 to October 1987 departure from the United States.
- An affidavit notarized July 16, 1996, from [REDACTED] who indicated that he first met the applicant in November 1987 and that the applicant needed a place to reside and "I would give him room & board and meals and eventually work for me that time."
- A statement from his father, [REDACTED] of Chicago, Illinois, who indicated that the applicant has been residing and working in the United States since 1978 and the applicant has been helping him and his wife economically.
- A statement from [REDACTED] of Chicago, Illinois, who indicated that he has known the applicant since 1979 and has remained friends with the applicant since that time.
- A statement from a brother, [REDACTED] of Elk Grove, Illinois, who attested to the applicant's residence in the United States since 1978.

On February 18, 2005, the director issued a Notice of Intent to Deny, advising the applicant that the evidence submitted only established his continuous residence from November 1986 to 1987. The affidavits provided were not able to be verified as the affiants could not be contacted and the applicant

had failed to provide evidence of his residence from 1982 to 1985 and 1988. The applicant was given 30 days in which to submit a response; however, the applicant failed to respond to the notice. On June 20, 2005, the director denied the application.

On appeal counsel asserts, in part, "The Service's own records which were based upon statements made three years before application recite that the appellant entered the United States on or about 1980." Counsel argues that is highly contradictory to ignore the statement contained within the Form I-213, which supports the applicant's eligibility.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien dated June 26, 1999, and a Form I-862, Notice to Appear, dated September 9, 1999, which indicated that the applicant last entered the United States on or about 1980. However, as noted on the Form I-213, at the time this form was initiated, the applicant was not present to answer any questions. The information contained within the Forms I-213 and I-862 was obtained from information in the applicant's alien registration file [REDACTED].

On appeal, counsel asserts that as a previous agricultural worker, it is unreasonable to expect the applicant to have primary documentation such as leases, utility bills and bank accounts; especially when the period was nearly 25 years ago. Counsel asserts that the apparent dismissal of [REDACTED]'s affidavit as well as the affidavits from friends in light of the provisions of 8 C.F.R. § 103(b) and other objective evidence which confirms some of the exact time periods is not warranted.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence, and the applicant's inability to produce additional evidence of residence for the period in question have been considered. Citizenship and Immigration Services has determined that affidavits from third party individuals may be considered as evidence of continuous residence. Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits 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 or her knowledge for the testimony provided. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States from before January 1, 1982, through October 1986 and in 1988. Specifically:

1. [REDACTED], and [REDACTED] claimed to have known the applicant since 1978, 1979 and 1980, respectively, but no attestations to the applicant's actual residence in the United States were indicated, and neither affiant provided any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.
2. The photographs have no identifying evidence that could be extracted which would serve to either prove or imply that photograph was taken in the United States and during the requisite period.
3. [REDACTED] indicated that he provided the applicant with room and board and employment, but he neither provided the address where the applicant was residing nor the exact dates of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

4. The airline ticket only serves to establish that the applicant was traveling within in the United States on August 5, 1985.
5. The affidavits from the applicant's brother and father must be viewed as having a self-evident interest in the outcome of proceedings, rather than as independent, objective and disinterested third parties. Furthermore, neither affiant provided any attestation to the applicant's actual residences in the United States during the period in question.
6. The employment affidavit from [REDACTED] did not meet *all* of the regulatory requirements set forth in 8 C.F.R. § 245a.2(d)(3)(i). However, the affidavit must be considered in light of the other supporting evidence and the applicant's own testimony with a determination being made based upon the totality of the circumstances. In the instant case, the applicant provided no evidence from affiants to corroborate his claim to have resided in California during this employment.

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 evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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.