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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]
MSC 02 242 62517

Office: HOUSTON

Date:

APR 23 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

for 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, Houston, 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 applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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. Section 1104(c)(2)(B)(1) of the LIFE Act; 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).

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.

At the time of his initial interview on November 17, 1992, the applicant under oath admitted in a sworn statement that he first entered the United States approximately four years earlier. Along with his Form I-

687 application, the applicant provided the following documents in an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988:

- Notarized affidavits from [REDACTED] and [REDACTED], who indicated that they have known the applicant since February 1981 and 1982, respectively, but made no attestation to the applicant's residence in the United States during the requisite period.
- A notarized affidavit from a landlord, [REDACTED] who attested to the applicant's residence at [REDACTED] Houston, Texas, from January 1983 to 1992.
- A notarized affidavit from [REDACTED] who indicated that he has been acquainted with the applicant since January 1982, but made no attestation to the applicant's residence in the United States during the requisite period.
- A notarized affidavit from [REDACTED], who indicated that the applicant was in his employ as a "roofing helper" from January 1982 to September 1991.

At the time the applicant filed his LIFE application, he only presented evidence to establish his residence in the United States subsequent to the requisite period.¹

On June 13, 2005, the director issued a Notice of Intent to Deny, which advised the applicant of the contents of his sworn statement. The applicant, in response, asserted that he has been residing in the United States since 1981. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided copies of documents previously submitted along with the following:

- Four envelopes the applicant claimed were postmarked in 1981 to and from his address at [REDACTED] Houston, Texas.
- Notarized affidavits from [REDACTED] and [REDACTED] of Houston, Texas, who indicated that they have known the applicant since 1982 and attested to the applicant's Houston residence at [REDACTED] with the applicant's aunt, [REDACTED]. Mr. [REDACTED] asserted that he and the applicant used to play at this residence and have remained friends since that time. Mr. [REDACTED] asserted that he used to visit his friend, [REDACTED] at this residence and the applicant was there all the time.
- An additional notarized affidavit from [REDACTED] of Houston, Texas, who attested to the applicant's residence at his mother's house, [REDACTED], Houston, Texas since the latter part of 1981 through 1992.

On appeal, counsel argues that the director had ignored the evidence submitted in response to the Notice of Intent to Deny. Counsel's assertion is without merit as the director, in denying the application, did consider the evidence presented, but determined that the evidence did not overcome the applicant's sworn testimony of 1992, that he entered the United States "about four years earlier." The director noted that the affidavits were from the same individuals who had previously submitted affidavits and who, according to the applicant's sworn testimony, were coerced by the applicant and the preparer of the Form I-687 application into providing false statements to establish his residence in the United States since 1981.

¹ At the time the Form I-485 application was filed, the applicant was given alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file [REDACTED] all the documentation from the Form I-485 application was consolidated into the prior A-file.

On appeal, counsel asserts that at the time of his interview in 1992, the interviewing officer asked the applicant "several questions and wrote several notes and at then [sic] end had Applicant sign his initials. Applicant did not know what the examiner wrote because it was in English." Counsel contends that the four years the interviewing officer was referring to was the last date the applicant reentered the United States in May 1987.

It must be noted that the interviewing officer who took the applicant's sworn statement specifically indicated on the Form I-648, Memorandum Record of Interview, that the interview had been conducted in Spanish, the applicant's native language. An inference cannot be drawn that the information or documentation submitted is now accurate simply because the applicant recants his admission.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965).

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 since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility. Specifically:

1. The affidavits from [REDACTED] raise questions to their credibility as in his initial affidavit, the affiant claimed to have been acquainted with the applicant "since Jan 1982." However, in his subsequent affidavit, the affiant amended his affidavit to indicate the applicant had been residing with him at his aunt's home from the latter part of 1981 through 1992. 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, Mr. [REDACTED]'s affidavits have little probative value or evidentiary weight.
2. [REDACTED], in his amended affidavit, indicated that the applicant resided at his aunt's home, [REDACTED] Houston, Texas from the latter part of 1981 through 1992. However, [REDACTED] indicated in her affidavit that the applicant resided at this residence from January 1983.
3. [REDACTED] and [REDACTED] both attested to the applicant's residence at [REDACTED] Houston, Texas in 1982. However, [REDACTED] indicated in her affidavit that the applicant resided at this residence from January
4. The envelopes submitted have little probative value as the postmarks are indecipherable. Furthermore, the stamp, La Partera Tradicional en México, on one of the envelopes the applicant claimed was postmarked in 1981 clearly indicates that it was issued in 1992, and the "G" stamp issued by the United States Postal Service was introduced on January 1, 1995.

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 numerous 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains a Form I-213, Record of Deportable Alien, which reflects that on April 30, 1998, the applicant was arrested at Williams Construction and was placed in removal proceedings. In this proceeding on December 14, 1998, the applicant presented a notarized affidavit from [REDACTED] who indicated that the applicant rented a garage apartment on his property from October 25, 1988, to October 10, 1991. The affiant made no mention of the applicant residing with him during the requisite period. The applicant also presented a notarized affidavit from [REDACTED], who indicated that the applicant resided at his Houston home, [REDACTED] from January 15, 1985, to October 25, 1988. The affiant made no mention that the applicant was in his employ during the requisite period.

On his Form EOIR-42B, Application for Cancellation of Removal, the applicant only listed employment commencing in February 1985.

Accordingly, [REDACTED] and [REDACTED]'s affidavits submitted with the applicant's Form I-687 application and in response to the Notice of Intent to Deny have no probative value or evidentiary weight.

The record also contains the immigration judge's oral decision issued on August 20, 1999, which indicates that the applicant testified that he first entered the United States at the age of 17 on January 15, 1985, that he began working the first month after he arrived in the United States, and he had not departed the United States since his 1985 entry. This information directly contradicts the applicant's claims on his Form I-687 application to have entered the United States in December 1981 and to have departed the United States in 1983 and 1987.

Accordingly, the affidavits submitted by the remaining affiants attesting to the applicant's residence prior to January 15, 1985, have no probative value or evidentiary weight.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

The applicant has, therefore, failed to establish that he resided in a continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Therefore, 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.