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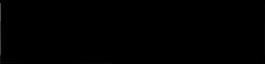
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



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FILE:



Office: HOUSTON

Date:

APR 25 2008

MSC 02 120 63221

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

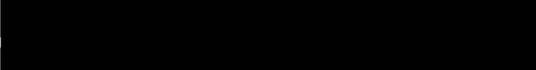
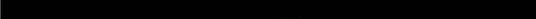
The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the numerous unresolved discrepancies in the record cast doubt upon the applicant's claims.

On appeal, counsel contends that the application was erroneously denied, and claims that the director did not consider the applicant's response to a notice of intent to deny issued prior to the denial. Counsel encloses a copy of the response and requests reconsideration based on the statements contained therein.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the affidavit for class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States on March 30, 1981 when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on January 9, 1991, the applicant claimed to live at the following addresses in Houston:

April 1981 to December 1984:	
January 1985 to February 1987:	
March 1987 to Present:	

He further claimed to be employed by the following companies during the relevant period:

April 1981 to June 1984:	Omni Service, Helper
November 1984 to July 1987:	Overseas Garments, Salesman
August 1987 to Present:	 , Laborer

In an attempt to establish continuous unlawful residence during the requisite period, the applicant furnished the following evidence:

- (1) Affidavit dated October 23, 1990 by , claiming that he has known the applicant for four years. Specifically, he claims that they have been friends since 1986 and that they began living together in 1987 and continue to do so

- (2) Undated letter from [REDACTED], Sales Manager for Overseas Garments Enterprises, claiming that the applicant worked for the company as a salesman from November 1984 to July 1987.
- (3) Letter Dated October 16, 1990 from [REDACTED] Secretary for The Islamic Society of Greater Houston, claiming that the applicant has been a member of the society since 1981.
- (4) Letter dated November 2, 1990 from [REDACTED] Service Manager for Omni Services, claiming that the applicant worked for the company as a warehouse helper from April 1981 to June 1984.
- (5) Affidavit dated October 23, 1990 by [REDACTED] claiming that she has been friends with the applicant for 9 years, since 1981. The affiant further stated that the applicant lived at the following addresses: [REDACTED] and [REDACTED]
- (6) Affidavit dated October 24, 1990 by [REDACTED], also claiming that he has known the applicant for 9 years, since 1981. He further claimed that he had knowledge that the applicant resided at [REDACTED]
- (7) Affidavit dated December 3, 2002 by [REDACTED] claiming that he has knowledge that the applicant has been living in the United States since 1981.
- (8) Affidavit dated December 3, 2002 by [REDACTED] claiming that he has knowledge that the applicant has been living in the United States since 1981.
- (9) Affidavit dated December 3, 2002 by [REDACTED], claiming that he has knowledge that the applicant has been living in the United States since 1982.
- (10) Affidavit dated December 14, 2002 by [REDACTED] claiming that he has knowledge that the applicant has been living in the United States since 1984.
- (11) Affidavit dated December 3, 2002 by [REDACTED] claiming that he has knowledge that the applicant has been living in the United States since 1985.
- (12) Affidavit dated December 2, 2002 by [REDACTED] claiming that he has knowledge that the applicant has been living in the United States since 1985.
- (13) Copy of a letter and envelope addressed to the applicant at [REDACTED] Houston, TX 77025. The postmark on the envelope is dated October 25, 1983.
- (14) Second affidavit by [REDACTED] dated January 8, 1991, claiming that the applicant has been living with him at [REDACTED] from 1987 to present.
- (15) Affidavit dated January 4, 1991 by [REDACTED] claiming that the applicant departed the United States for Canada on July 15, 1987 and returned on August 10, 1987.

On March 8, 2003, CIS issued a Notice of Intent to Deny the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through May 4, 1988. The director noted that there were serious discrepancies with regard to the claims made by the applicant in his November 14, 2002 interview and subsequent statements made at the U.S. Border in 1990. The applicant was afforded thirty days to respond to the director's notice. No response was submitted in the time frame allowed, and the director denied the application on November 7, 2003.

In response, counsel claims that the a timely response was submitted on behalf of the applicant, and a copy of that response is submitted on appeal. Counsel asserts that the applicant has satisfied his burden of proof, and requests approval of the application. No new evidence was submitted on appeal.

Upon review, the AAO concurs with the director's decision.

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 quality 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 or petitioner 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 or petition.

The *Matter of E-- M--* decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable.

Although the applicant claims that he entered the United States in March 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. Although the applicant provides several affidavits in support of his presence during the early part of the relevant period, none of the affiants make reference to or verify the applicant's claim of illegal entry into the country in March 1981.

Moreover, the record contains notes pertaining to the applicant's refused admission to the United States on April 18, 1997. Specifically, the record indicates that the applicant attempted to enter the United States at Niagara Falls, New York. When questioned, the applicant claimed that he and his wife had been living in Texas since 1990. This issue presents two problems. First, in his service interview on November 14, 2002, the applicant claimed that he departed the United States on two occasions only: in 1987 to visit relatives in Canada for 25 days, and in 1994 to get married in Pakistan. However, the record contains documentation that the applicant was refused entry to the United States when attempting to cross the border at Niagara Falls, which he failed to disclose during his interview.

Second, if the applicant's claim that he was residing in the United States with his wife since 1990 is true, it stands to reason that he was not in the United States during the relevant period. In the response to the notice of intent to deny, counsel states that the applicant stands by the claims set forth in his November 14, 2002 interview. However, these serious discrepancies cast doubt upon the validity of the applicant's claims. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In addition, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Absent documentation of entry coupled with these conflicting statements, the AAO concludes that there is insufficient evidence to definitely establish that the applicant entered the United States prior to January 1, 1982.

Additionally, the applicant provided two employment verification letters. The first letter, dated November 2, 1990 from [REDACTED] Service Manager for Omni Services, claims that the applicant worked for the company as a warehouse helper from April 1981 to June 1984. The second letter, from [REDACTED] Sales Manager for Overseas Garments Enterprises, claims that the applicant worked for the company as a salesman from November 1984 to July 1987. Both of these letters are written on company letterhead and identify the applicant's position while employed. However, they are very brief and provide minimal information, thereby omitting such crucial elements.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; 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. The letters discussed above omit the applicant's address at the time of employment, periods of layoff, the applicant's duties, and whether the information was taken from company records. They further did not 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.

It is noted that CIS attempted to contact the employers to verify the information provided and obtain additional details. The telephone number provided for Overseas Garments Enterprises was incorrect (it was a residential number, not a business number). No telephone number was provided for Omni

**Services.** The minimal information provided in these letters fails to comply with the requirements outlined by 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, since the attempts by CIS to verify the information provided and obtain further details were not successful, these documents cannot be afforded much evidentiary weight in these proceedings.

The inference to be drawn from the documentation provided shall depend on the extent of the documentation. The conflicting statements by the applicant to CIS officers, in addition to the minimally probative employment letters, do not create a solid case for the applicant. Although numerous affidavits of acquaintances have been submitted, the unresolved inconsistencies noted above have not been clarified by the applicant. These inconsistencies 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 knowledge for the testimony provided.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits upon which the applicant relies are deficient in that the affiants provide only minimal information and fail to provide the basis for their knowledge or the origin of the information to which they attest. For example, the applicant submits six affidavits that are virtually identical, aside from the fact that they are executed by different persons. The affidavits of [REDACTED], and [REDACTED] are all identical, in that they identify the applicant's current address and claim they know the applicant has been living in the United States since 1981, 1982, 1984, or 1985. On each affidavit, aside from the personal information of the affiants, the only item that differs is the year. None of these affiants provide details regarding their relationship with the applicant, how they came to know the applicant, or where the applicant resided during the requisite period.

Furthermore, although other affiants, such as [REDACTED] and [REDACTED] who claim to have known the applicant since 1981, state that the applicant lived at the following addresses: [REDACTED] and [REDACTED]. However, the record confirms that the applicant did not move to [REDACTED].

until March 1987. If the affiants truly knew the applicant as early as 1981, it is unclear why they were unable to provide his two previous addresses during that period.

Despite the submission of the applicant's response to the notice of intent to deny on appeal, the applicant failed to overcome the objections raised by the director, and provides no new evidence on appeal to refute the director's findings. Counsel merely claims that the applicant's statements in his November 14, 2002 interview were true, and claims that the applicant is "at a loss" by the other conflicting statements and evidence. However, absent documentation to support the claims, the AAO cannot find in favor of the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. 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.