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FILE: MSC 02 022 64527

Office: LOS ANGELES

Date: **AUG 27 2008**

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. 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, Los Angeles, California, 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 to establish that he entered the United States prior to January 1, 1982 and continuously resided since that date 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)(i) 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.

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

- An earnings statement from [REDACTED] for the pay period February 29, 1988 through March 13, 1988.
- A notarized affidavit from [REDACTED] of Pomona, California, who attested to the applicant's residence in Pomona, California from September 1981 to May 1995. The affiant based her knowledge on having resided in the applicant's home from September 1987 to January 1996.
- A notarized affidavit from [REDACTED] of Ontario, California, who indicated that he met the applicant in 1986 at the time the applicant was picking up his children from school. The affiant indicated that he had personal knowledge of the applicant's residence in [REDACTED] since "1995."
- A notarized affidavit from [REDACTED] of San Bernardino, California who attested to the applicant's residence in Ontario, California from September 1985 to May 1995. The affiant indicated that he was a neighbor of the applicant during this period and has remained a friend of the applicant since that time.
- A notarized affidavit from [REDACTED] of Ontario, California, who attested to the applicant's residences in Pomona, California from December 1984 to May 1985 and in Ontario, California from May 1985 to May 1995. The affiant based his knowledge on being a close friend of the applicant.
- A notarized affidavit from [REDACTED] of Whittier, California, who indicated that he was a co-worker of the applicant at "[REDACTED]" from January 1983 to 1986.
- A notarized affidavit from [REDACTED] of Pomona, California, who attested to the applicant's residences at [REDACTED], in Pomona from July 1982 to September 1984 and in Ontario from September 1984 to May 1995. The affiant indicated that he was a neighbor of the applicant from July 1982 to September 1984 and has remained friends with the applicant since that time.
- A notarized affidavit from [REDACTED] of Ontario, California, who attested to the applicant's residences in Pomona from December 1981 to September 1984 and in Ontario from September 1984 to May 1985. The affiant indicated that she met the applicant through a friend that resided next door to the applicant.

On January 11, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the documents submitted were insufficient to establish that he entered the United States prior to January 1, 1982 and resided continuously since that date through May 4, 1988.

Counsel, in response, submitted copies of some of the affidavits that were previously provided along with a photocopied rent receipt for May 1, 1988 that appears to have been altered. The year appears to have been changed to reflect "1988." Counsel also provided a photocopy of an immunization record of the applicant's son who was born on December 25, 1985 in Mexico. The immigration record lists several dates that the vaccinations were given; however, the dates are either indecipherable or subsequent to the period in question.

Counsel asserted that the documentation submitted establishes that the applicant's testimony is credible and consistent with his record. Counsel stated that there are no inconsistencies in the applicant's record, and that the director should look at the totality of the evidence as a whole and make an objective decision.

On appeal, counsel submits copies of documents that were previously provided along with an affidavit from the applicant indicating that he has resided in the United States since 1981 and “since coming to the United States I have always worked. When I first started working I did not save any receipts, bills or check stubs. I was paid in cash, I also did not open any bank accounts.”

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

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 knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

- [REDACTED] indicated that he was a co-worker of the applicant at “[REDACTED]” from January 1983 to 1986. However, the applicant did not claim employment at this restaurant on his Form I-687 application. In addition, the applicant, on his Form G-325A, Biographic Information, dated September 4, 2001, indicated that he has been employed at [REDACTED] since 1997.
- Item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period. The applicant listed only one employer, [REDACTED] but failed to provide the employer's address. As such, the applicant's alleged employment at this restaurant, during the qualifying period, is not amenable to verification by CIS.
- [REDACTED] indicated that he has known the applicant since 1986, but failed to state the applicant's place of residence during the requisite period.
- [REDACTED]s and [REDACTED] affidavits can only serve to establish the applicant's residence since December 1984 and September 1985, respectively. The affiants made no claim to have known the applicant prior to December 1984 and September 1987.
- [REDACTED], in his affidavit, attested to the applicant's Pomona residence at [REDACTED], from July 1982 to September 1984. The applicant, however, did not claim to have resided at this address on his Form I-687 application.
- [REDACTED] claimed that she has personal knowledge of the applicant's residence in Pomona from 1981 to 1995 because she resided in the applicant's home from September 1987 to January, 1986. First, the applicant cannot attest to the applicant's residence prior to September 1987 as she provided no detail regarding the basis for her awareness of the applicant's residence prior to September 1987. Second, [REDACTED] attestation to the applicant's residence in Pomona from 1981 to 1995 contradicts the affidavits of [REDACTED] and [REDACTED] who attested to the applicant's residence in Ontario, California since 1985 and to the affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence in Ontario, California since 1984.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from any of the affiants has been submitted to resolve their contradicting affidavits. As such, the affiants' affidavits have little probative value or evidentiary weight.

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 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.

Finally, the record reflects that the applicant has been convicted of violating section 12500(a) CVC, driving without a license, on June 12, 1991 in Case no. [REDACTED], and violating section 20002(a) CVC, hit and run causing property damage on November 5, 1991 in Case no. [REDACTED]. While these convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does have two misdemeanor convictions.

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