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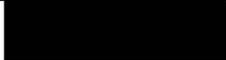
U.S. Citizenship
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FILE:



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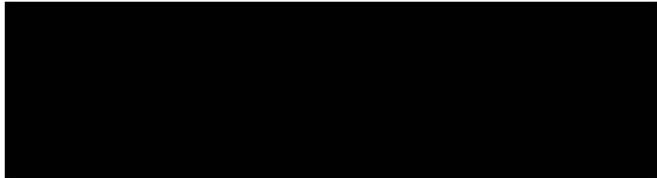
Applicant:



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, Houston, 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 (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988. The director specifically cited inconsistencies between the statements made by the applicant in his interview and the statements provided on his affidavit for class membership and on Form I-687, Application for Status as Temporary Resident.

On appeal, counsel states that the applicant was nervous during the interview and did not demonstrate a full comprehension of English, thereby resulting in the conflicting statements. Counsel requests reevaluation and reconsideration of the evidence in the record.

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).

On his affidavit for class membership, which he signed under penalty of perjury on October 10, 1990, the applicant claims that he first entered the United States in July 1981 without inspection. On Form I-687, which he also signed under penalty of perjury on January 18, 1990, he again claimed that he entered the country in July 1981, and claimed to work for the following employers during the relevant period:

October 1981 to November 1986:
January 1987 to December 1988:



Regarding his residences, the applicant claims that he lived at the following addresses in Houston:

July 1981 to May 1985:
June 1985 to October 1989:



In an attempt to establish continuous unlawful residence since July 1981 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Affidavit dated October 22, 1990 by _____ who claimed that he has known the applicant since 1981. He further claimed that he had knowledge of the applicant's trip to Colombia on December 20, 1987, and attests that he returned to the United States on January 12, 1988.

- (2) Undated statement from [REDACTED], accountant for [REDACTED], claiming that the applicant worked for the company from October 1981 to November 1986. He claims that the applicant has been "punctual and dedicated." Included with this statement are Forms 1099, Miscellaneous Income, for the years 1981, 1982, 1983, 1984, 1985 and 1986.
- (3) Undated statement from [REDACTED], owner of [REDACTED] claiming that the applicant was employed by him from January 1987 to December 1988. Although the statement is prepared in affidavit form, it is not notarized or witnessed.
- (4) Affidavit dated May 25, 1990 by [REDACTED] owner or custodian of the property located at [REDACTED]. He claims that he leased this property to the applicant from June 1985 to October 1989.
- (5) Affidavit dated March 20, 1990 by [REDACTED], owner or custodian of the property located at [REDACTED]. He claims that he leased this property to the applicant from July 1981 to May 1985.
- (6) Affidavit dated August 20, 1990 by [REDACTED], claiming that she has known the applicant since December 1981. She claims she has known him "at the church."
- (7) Affidavit dated April 19, 1990 by [REDACTED] claiming that he has known the applicant since January 1982. He claims he has known him "at the same soccer team."

On December 6, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that during his interview on October 8, 2004, major discrepancies were noted in comparison to the claims previously made in his application. The applicant claimed that he entered the United States in June 1979, despite his claims on Form I-687 and on the class affidavit that he entered the country in July 1981. Most importantly, however, the director noted that the applicant claimed he did not know [REDACTED] who provided employment verification as well as a personal reference for the applicant. The applicant claimed that [REDACTED] was a friend of his attorney. Furthermore, the applicant claimed that he was employed by Buon Appetite restaurant in 1981, 1982 and 1983, in contrast to the evidence showing he was employed by [REDACTED] during this period. He further stated that he did not know who [REDACTED] was, although [REDACTED] was apparently his landlord for 1985 to 1989. He further indicated that he did not know several other affiants who submitted sworn statements on his behalf.¹ The director afforded the applicant the opportunity to clarify these inconsistencies, but no response was submitted.

The director denied the application on February 28, 2005. The director noted that the applicant had failed to overcome the basis for the director's objections. On appeal, counsel for the applicant claims that during the October 8, 2004 interview, the applicant had difficulty understanding English and was thus very nervous. As a result, counsel contends, his responses varied from previous statements because he simply did not understand what the officer was asking. Counsel concludes by claiming the applicant has satisfied his burden of proof by a preponderance of the evidence.

¹ Because these statements pertained to the applicant's U.S. residence after the relevant period, specifics regarding their content need not be considered.

The issue on appeal is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b), and maintained has maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988.

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 or 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.

Here, the submitted evidence is not relevant, probative, and credible. Furthermore, the statements of the applicant are inconsistent and remain unresolved, thereby undermining the credibility of all evidence submitted.

The director's denial was largely based on the applicant's inconsistent statements in his October 8, 2004 interview. The most important statement is the claim that he did not know who [REDACTED] was. While counsel on appeal points out that [REDACTED] was the accountant for [REDACTED], thus implying the two had never met and that [REDACTED] was merely verifying payroll records, it should be noted that Mr. [REDACTED] submits several other documents in support of the application. Most importantly is his affidavit dated October 22, 1990, in which he claimed that he has known the applicant since 1981, and that he had knowledge of the applicant's trip to Colombia on December 20, 1987. While verifying that the applicant was on [REDACTED]'s payroll is certainly possible without being personally acquainted with the applicant, the attestation that he has personally known the applicant and has knowledge of his trip to Colombia in 1987, one year after he allegedly stopped working for [REDACTED], is an entirely different story. 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). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). It is also noted that [REDACTED] also signs a statement on the letterhead of Inter American International Corporation, verifying the applicant's employment with the company beginning in 1989. It is questionable that [REDACTED] served as the accountant for two of the applicant's employers as well as a personal reference, yet the applicant denies knowing him.

Furthermore, it should be noted that despite the questions surrounding the legitimacy of [REDACTED] and the information to which he attests, it should be noted that he provides copies of the applicant's Forms 1099 for the years 1981 to 1986. However, since the applicant claims that he worked at Buon Appetite restaurant from 1981 to 1983, it is not clear which claim regarding employment is correct. Moreover, it should be noted that, although [REDACTED] verifies that the applicant was "employed" by [REDACTED], the fact that he submits Forms 1099 for the applicant indicates that, at best, the applicant was an independent contractor. It is not unreasonable, therefore, for a certified accountant to distinguish between "employee" and "contractor," which [REDACTED] failed to do in his employment verification letter. This oversight in terminology casts further doubt on the veracity of [REDACTED]'s statements.

These inconsistencies were not reconciled by the applicant prior to adjudication, despite the fact that he was afforded an opportunity to clarify these statements. 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 582. As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The above negative factors 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. For the reasons previously discussed, this is not the case in this matter.

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).

The affidavits submitted for the record contain minimal statements regarding the basis for the affiants' acquaintance with the applicant, such as knowing him through church or a soccer team. More importantly, the applicant acknowledged in the interview that he did not know several of the affiants upon whose statements the application relies. The lack of detailed information in the affidavits, coupled with the absence of credible contemporaneous documentation to establish continuous unlawful status and physical presence in the United States from the time he claimed to have commenced residing in the U.S. through **May 4, 1988, renders the applicant ineligible for the benefit sought.** This inability to produce contemporaneous and uncontradicted documentation of residence raises serious questions regarding the credibility of the claim.

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.