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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date:

JUL 22 2008

[REDACTED] - consolidated herein]

MSC 02 205 60909

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.

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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 (INA) 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 states 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 petitioner 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 regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

On April 23, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

In a Notice of Intent to Deny (NOID), dated November 14, 2005, the district director advised the applicant that he had failed to establish continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The district director denied the application in a Notice of Decision (NOD), dated January 19, 2006, based on the reasons stated in the NOID. The applicant filed a timely appeal from that decision on February 17, 2006.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to establish that he continuously resided in the United States in an unlawful status before January 1, 1982, through May 4, 1988. With regard to that time period, the applicant has provided the following documentation:

Employment Letters

- A letter, dated July 22, 1995, from Colonial Remodeling & Construction, Aurora, Illinois, stating that “[REDACTED]” was employed by the firm in April 1982 and laid off in November 1985 due to lack of work.
- A letter, dated August 2, 1995, from [REDACTED] Personnel Assistant of ISS Building Maintenance, Hillside, Illinois, stating that the applicant had been employed since November 12, 1985.

- A letter, dated February 27, 2001, from One Source, Chicago, Illinois, stating that the applicant was hired as a janitor on June 4, 1985.
- A letter, dated February 27, 2001, from [REDACTED] office manager of OneSource Building Services, Inc., formally known as ISS, International Service Systems, stating that the applicant was hired as a janitor on June 4, 1985, and is currently working for the company full-time.

Church Attestations

- A letter, dated June 13, 1996, from Rev. [REDACTED] of St. Nicholas Church in Aurora, Illinois, stating that the applicant became a member of Holy Angels Catholic Church in June 1982, and has been a member of St. Nicholas Catholic Church “for the past three years.”
- A letter, dated November 28, 2005, from [REDACTED] of St. Nicholas Catholic Church in Aurora, Illinois, stating that the applicant is an active member of the church and attends Mass every Sunday.

Affidavits

- A letter, dated July 24, 1995, from [REDACTED], stating that the applicant resided with him as a tenant from June 1985 through September 1988.
- An affidavit, dated September 16, 2005, from [REDACTED] stating that she met the applicant in approximately 1982 while living in an apartment at [REDACTED], Aurora, Illinois. Ms. [REDACTED] states that the applicant lived next to her at the same house and she would see the applicant come in and out of the apartment and they “said hi to each other.” Ms. [REDACTED] further states that the applicant was young and that she thought he was the son of one of the persons who rented the apartment next to her. A second letter from [REDACTED] dated July 16, 2006, states that she had known the applicant since December of 1981 – that they were neighbors and “would visit each other frequently.”
- A letter, dated May 23, 1996, from [REDACTED], owner of the Supermercado El Palenque in Aurora, Illinois, stating that the applicant had been a client since 1982.
- A letter, dated June 6, 1996, from [REDACTED] an employee at Lomitas Real Estate in Aurora, Illinois, stating that she had known the applicant since 1982, and that he purchased a home through her company.
- A letter, dated June 22, 1996, from [REDACTED] an independent business owner in Aurora, Illinois, stating that the applicant had been a client since 1982.
- A letter, dated June 24, 1996, from [REDACTED] an employee at Hercules Gallery of Hair in Aurora, Illinois, stating that the applicant had been a client since 1982. A letter, dated June 27, 1996, from [REDACTED] and [REDACTED] stating that they had known the applicant since 1982.

- A letter, dated June 29, 1996, from [REDACTED] stating that the applicant resided with him since October 1984.
- A letter, dated June 29, 1996, from S [REDACTED], owner of a clothing and shoe store for women and children in Aurora, Illinois, stating that the applicant had been a client since 1982.
- A letter, dated July 6, 1996, from [REDACTED] stating that she had known the applicant since 1982.
- A letter, dated March 3, 1997, from [REDACTED] stating that she had known the applicant since October 1981, and that he resided in Aurora, Illinois, for the last four years (since 1993).
- A letter, dated July 16, 2005, from C [REDACTED], stating that she “rented” an apartment to the applicant at [REDACTED] Aurora, Illinois, from October 1981 through June 1985. In an affidavit, dated September 16, 2005, [REDACTED] states that the applicant lived in an apartment that she rented to his uncle, [REDACTED] and that she had known the applicant’s wife’s family since 1976. The applicant’s wife, [REDACTED], would visit the house and later on [REDACTED] and the applicant were married. In another letter from [REDACTED], dated March 7, 1997, Ms. [REDACTED] states that the applicant “resided” with her at the Flag Street address during the same time period (October 1981 to June 1985).
- A letter, dated November 26, 2005, from [REDACTED], of Aurora, Illinois, stating that the applicant was his roommate at two different locations from October 1981 through September 1988.
- A letter, dated November 29, 2005, from [REDACTED] of Aurora, Illinois, stating that she had known the applicant since 1982 – that they both attend St. Nicholas Church and have reunions to study the bible on Thursdays.
- A letter, dated December 1, 2005, from [REDACTED], of Aurora, Illinois, stating that the applicant had been a friend since April 1982.
- A letter, dated December 5, 2005, from [REDACTED] president of Bella Jewelry Inc. in Aurora, Illinois, stating that the applicant had been a client since 1982.

With regard to the above employment letters, there is no evidence contained in the record that the applicant was ever known by the name of [REDACTED]” the name of the employee noted by Colonial Remodeling & Construction. Furthermore, the employment letters from OneSource (aka One Source Building Services, Inc., aka ISS, International Service Systems, aka ISS Building Maintenance) are not supported by company payroll records, do not identify the location of such records and state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable. There is also a discrepancy noted in the alleged date the applicant was hired. Ms. [REDACTED] states that the applicant was hired on June 4, 1985, while Ms. [REDACTED] states that he was hired on November 12, 1985.

With regard to the above church attestations, it is noted that they do not show the address(es) where the applicant resided throughout the membership period or establish the origin of the information

being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

The documentation provided by the applicant consists primarily of third-party letters and affidavits (“other relevant documentation”). These documents generally lack specific details as to how the affiants knew the applicant during the requisite time period from 1982 through 1988. While not required, none of the letters provided by the applicant, other than the affidavits from Ms. [REDACTED] and Ms. [REDACTED], are accompanied by proof of the affiants’ identification or any evidence that they actually resided in Illinois during the relevant period. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims of alleged 14 to 24 year relationships with the applicant. It is unclear as to what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, the letters can be afforded only minimal weight as evidence of the applicant’s residence and presence in the United States for the requisite period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided church attestations that comply with the regulations set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A)(v), or any other documentation (including, for example, money order receipts, passport entries, children’s birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K) that cover the relevant time period.

As stated previously, the evidence provided must be evaluated not by the quantity of evidence alone but by its quality.

Furthermore, aside from the discrepancies previously noted, the record is not clear as to specifically when the applicant claims to have initially entered the United States and how many times he departed the United States since his initial entry, as well as his addresses and activities in the United States from 1982 through 1988.

On an “Affidavit for Determination of Class Membership,” dated June 26, 1995, the applicant did not complete the question “When did you first enter the United States?” He did, however indicate that he had last departed the United States in December 1987. On a Form I-485, Application to Register Permanent Residence or Adjust Status, filed on January 22, 1997, the applicant claimed eligibility on the basis that he had continuously resided in the United States since before January 1, 1972, and noted that his last entry into the United States had been on January 10, 1988. On a Form I-213, Record of Deportable Alien, and Form I-862, Notice to Appear, both dated in June 2000, the applicant’s last date of entry into the United States is noted as having been without inspection at or

near San Ysidro, California, on March 10, 1992. On the current Form I-485, filed under the LIFE Act on April 23, 2002, the applicant did not complete the question regarding his date of last arrival.

On a Form G-325, Biographic Information, signed by the applicant on January 18, 1997, he listed his address in the United States from December 1971 through September 1988 as (illegible number) [REDACTED], Aurora, Illinois. On that Form G-325, the applicant also wrote that he was a student and supported by his parents from December 1971 through June 1985. This information contradicts the documentation listed above that was provided by the applicant with regard to his current application for adjustment of status under the LIFE Act, wherein he claims to have lived at the Flag Street address and to have been employed by Colonial Remodeling & Construction from 1982 to 1985.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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, 591-92 (BIA 1988).

On appeal, counsel attempts to explain the discrepancies by asserting that the information provided on earlier forms should not be used to infer that the applicant never lived at other locations in Aurora, Illinois, between 1982 and 1988, and that Citizenship and Immigration Services (CIS) should take into consideration that the average person's memory fades considerably when it comes to detailed information like one's addresses.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The AAO concludes that the applicant has not met his burden of proof. He has not established, by a preponderance of the evidence, that he resided in 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. Given this, he 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.