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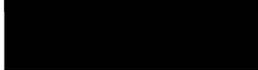
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 208 61032

Office: CHICAGO

Date:

JUL 30 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's past employment should be on employer letterhead stationery, if the employer has such stationery, and 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.

In a Notice of Intent to Deny (NOID), dated May 12, 2005, the district director determined that the applicant had failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. In a Notice of Decision (NOD), dated July 15, 2005, the district director denied the application based on the reasons stated in the NOID.

On appeal, counsel asserts that the applicant has presented evidence that clearly demonstrates, by a preponderance of the evidence that he has been in this country since January 1, 1982, and that Citizenship and Immigration Services (CIS) failed to properly consider the affidavits and other documentation provided in making a final decision.

The issue in the proceeding is whether the applicant has submitted sufficient evidence to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

The applicant is a native and citizen of Mexico who was married to [REDACTED] in Mexico in July 1981. He has three daughters – [REDACTED] born in Mexico on April 29, 1982, September 10, 1985, and December 22, 1986, respectively. The applicant claims to have initially entered the United States without inspection in September 1981 and to have resided at [REDACTED] Chicago, Illinois, from that date through at least 1988, and that he was employed at [REDACTED] Iron, [REDACTED] from October 1981 to April 1987. The applicant also

states that he departed the United States on only one occasion during the relevant time period – from December 14, 1987, to February 10, 1988 for a visit to Mexico.

The applicant has provided substantial documentation to establish his unlawful residence and presence in the United States since June 1987. However, there is insufficient evidence to establish that he entered the United States prior to January 1, 1982, and resided in an unlawful status from then through May 1987. In an attempt to establish his unlawful presence and residence in the United States prior to May 1987, the applicant has provided the following documentation throughout the application process:

Employment

With regard to employment in the United States prior to June 1987, the applicant provided an affidavit from [REDACTED] stating that the applicant had been employed by [REDACTED] Iron from October 8, 1981, to April 30, 1987. The affidavit generally complies with the regulation at 8 C.F.R. § 245a.2(d)(3)(i); however, it is not dated and attempts made by CIS to contact the company were unsuccessful – the phone number listed on the affidavit was for an auto glass business and the address listed was for an insurance agency. In response to the NOID, counsel provided evidence that the company was once in existence, but states that it has since closed. Because CIS has been unable to verify the information contained in the affidavit, it has little probative value in establishing the applicant’s employment in the United States during the relevant time period.

Church Attestation

The applicant provided a letter, dated June 26, 1991, from [REDACTED] Pastor of St Agnes Church, Chicago, Illinois, stating that the applicant, while not a registered member of the parish, had been a regular “church goer” since 1981. The letter does not establish how the author knows the applicant or establish the origin of the information being attested to – therefore, it does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v).

Affidavits

The applicant provided numerous affidavits from personal acquaintances and relatives regarding his presence and residence in the United States from 1981 to June 1987, including:

- A letter, dated July 1, 1991, from [REDACTED] of Supermercado La Justicia in Chicago, Illinois, stating that the applicant had been a client since September 1981.
- Fill-in-the-blank affidavits, dated July 8, 1991, from [REDACTED] [REDACTED] states that he had been a friend of the applicant’s since meeting him while the applicant was living in [REDACTED] house in 1981; [REDACTED] states that he was the applicant’s neighbor and that they “visit each other once [sic] time;” [REDACTED] states that the applicant, his uncle, had resided in Chicago since September 1981; and, [REDACTED] states that she

met the applicant at a picnic on Lake Shore Drive in 1981. Although the affiants claim to have personal knowledge of the applicant's presence in the United States since 1981, they do not provide the address where the applicant resided and do not indicate any personal knowledge of the applicant's claimed 1981 entry. Because the affidavits lack detail, they have only minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

- An affidavit, also dated July 8, 1991, from [REDACTED] Shop stating that the applicant had been a regular client since November 1981. CIS contacted [REDACTED] who, at that time, was unable to verify the contents of his affidavit. In response to the NOID, counsel provided an additional affidavit, dated June 9, 2005, from [REDACTED] stating that he had never advised CIS that he did not know the applicant – only that he knew numerous people named [REDACTED] and that once the applicant again contacted him (for the up-dated affidavit), he [REDACTED] realized that he indeed knew the applicant when he had a face to put with the name, and reaffirms that the applicant had been a client since 1981. Although [REDACTED] **claims that the applicant was his client beginning in 1981**, he is vague as to how he dates their acquaintance, how often they had contact, and provides no details that would lend credibility to his having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the affidavits from [REDACTED] afford minimal weight as evidence of the applicant's residence and presence in the United States during the relevant period.
- A fill-in-the-blank affidavit, again dated July 8, 1991, from [REDACTED] stating that she was the landlord of a building located at [REDACTED] Illinois, and had seen the applicant approximately one time per month since September 1981 while he was renting an apartment at her property. Later affidavits, dated March 27, 2003, from Ms. [REDACTED] and her son, [REDACTED], further attest to the applicant's residence in the United States at the [REDACTED] 1981. [REDACTED] states that she met the applicant in Mexico before he married her sister and that she and her husband offered the applicant room and board at their house, which they still own, where he shared an attic room with their son, [REDACTED] son reiterates these facts in his affidavit.
- An affidavit, dated March 27, 2003, from [REDACTED] stating that the applicant is a distant relative who came to Chicago in 1981 and lived at [REDACTED] [REDACTED] does not provide any details as to his knowledge of the applicant's entry, how he dates his acquaintance with the applicant, how often they had contact, or any other details that would lend credibility to his having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the relevant period. As such, this affidavit also affords minimal weight as evidence of the applicant's residence and presence in the United States during the relevant period.

- An affidavit, dated April 7, 2003, from [REDACTED] stating that she met the applicant in 1981 when she had a boyfriend who was the applicant's brother-in-law. [REDACTED] states that she moved into the house at [REDACTED] in 1983, and that the applicant lived in the attic with "other" family members whom she does not identify. The statement from [REDACTED] suffers from the same deficiencies as those noted above from other affiants.

It is noted that the affiants attesting to the applicant's having resided at [REDACTED] and her son, [REDACTED] - all relatives of the applicant - as well as [REDACTED] make no mention of the applicant's spouse having ever resided with/visited him at that address - merely that he lived in an attic apartment with [REDACTED]. As previously noted, the record reflects that the applicant was married in Mexico (two months prior to his claimed entry into the United States) and is the father of three children born in Mexico in April 1982, September 1985, and December 1986; however, he claims to have only departed the United States on one occasion during the relevant period - from December 1987 to February 1988.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*

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 absence of verifiable documentation to support the applicant's claim of continuous residence during the relevant period detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.