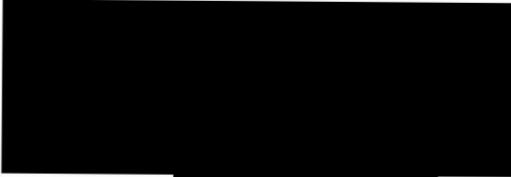


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Services

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La

FILE: [Redacted]
MSC 01 293 60115

Office: Houston

Date: MAR 12 2008

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:



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 the matter 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, Texas, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, the applicant reiterated his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant put forth an explanation for his conflicting testimony regarding the number of his absences from this country during the requisite period. The applicant acknowledged that he had learned that the office that had prepared his Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), and supporting documents had been accused of fraud but that he had no knowledge of such activities.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Act, 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 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 "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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on December 12, 1989. At part #16 of the Form I-687 application, the applicant claimed that he first entered the United States in 1979. A part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Las Vegas, Nevada from 1980 to October 1985 and [REDACTED] in Burbank, California November 1985 to September 1989. In addition, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he had only been absent from this country on one occasion when he traveled to Mexico to see family from June 1, 1987 to June 15, 1987. Furthermore, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant listed employment for [REDACTED] at [REDACTED] working with concrete from 1982 to December 1985 and employment for [REDACTED] as a trucker from December 1985 to October 1989.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted two affidavits that are signed by [REDACTED] and dated November 29, 1989 and December 7, 1989, respectively. In the affidavit dated November 29, 1989, [REDACTED] declared that he had known the applicant since 1984 and that he was a responsible and caring person. In the affidavit dated December 7, 1989, [REDACTED] stated that he was a personal friend of the applicant whom he known since 1982. [REDACTED] noted that he had knowledge that the applicant used the name “[REDACTED]” for work in the period from 1982 to 1985. However, [REDACTED] provided conflicting testimony regarding the date he first met the applicant by testifying he had known the applicant since 1984 in the affidavit dated November 29, 1989, while testifying that he had known the applicant since 1982 in the affidavit dated December 7, 1989. Further, [REDACTED] failed to provide any specific and verifiable

testimony in either of his two affidavits to corroborate the applicant's claim of residence in this country for the period in question.

The applicant included an employment affidavit that is signed by [REDACTED]. [REDACTED] asserted that he was a supervisor for [REDACTED] from 1980 to 1988 but that this company was no longer in business. [REDACTED] indicated that the applicant, utilizing the name [REDACTED] had been employed by this enterprise from 1982 to 1985 during the summer months. While [REDACTED] attested to the applicant's employment for the stated period, he failed to provide either a description of the applicant's duties or the applicant's address of residence during his employment with [REDACTED] as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided an employment affidavit signed by [REDACTED] who contended that the applicant worked for [REDACTED] in Los Angeles, California as a trucker from December 1985 to October 1989. However, [REDACTED] failed to attest to either the applicant's address of residence during his employment with this enterprise or pertinent information relating to the availability of company records as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] stated that he had known the applicant since 1982 and that he was a responsible and caring person. Nevertheless, [REDACTED] failed to provide any detailed testimony relating to the applicant's residence in this country during the requisite period.

The applicant included an affidavit signed by [REDACTED] who declared that she had known the applicant since 1980 and had provided him with transportation to different places in Las Vegas, Nevada. However, [REDACTED] failed to provide any specific and verifiable information that would substantiate the applicant's claim of residence in the United States since prior to January 1, 1982.

A review of parts #48 through #51 of the Form I-687 application reveals that the application itself as well as those documents noted above, with the exception of the employment letter signed by [REDACTED] that were included in the application package had been prepared, notarized, and reviewed by [REDACTED].

Subsequently, on July 20, 2001, the applicant submitted his Form I-485 LIFE Act application. At part #3B of the Form I-485 LIFE Act application where applicants were asked to list information relating to their current spouse and children, the applicant listed four daughters and a son, all of whom were born in Mexico. However, the applicant indicated that he did not know the respective dates of birth for any of these children by listing "UNK" for such dates of birth.

With the Form I-485 LIFE Act application, the applicant included copies of previously submitted documentation as well as new documents in support of his claim of residence in the United States since prior to January 1, 1982.

The applicant submitted an affidavit containing the letterhead of [REDACTED] in Pearland, Texas that is signed by [REDACTED]. [REDACTED] declared that he first met the applicant through one of his employees in 1981. [REDACTED] noted although the applicant did not directly work for his company the applicant worked for him personally on occasion. Mr. [REDACTED] asserted that he had knowledge that the applicant lived in Alvin, Texas from January 1981 to August 1988. However, [REDACTED]'s testimony that the applicant worked for him did not correspond to the applicant's testimony regarding his employment history at part #36 of the Form I-687 application as the applicant did not include [REDACTED] in his list of employers. More importantly, [REDACTED]'s testimony that the applicant lived in Alvin, Texas from January 1981 to August 1988 directly contradicted the applicant's testimony that he resided in Las Vegas, Nevada from 1980 to October 1985 and Burbank, California November 1985 to September 1989 at part #33 of the Form I-687 application.

The applicant included an affidavit signed by [REDACTED] who noted that he had known the applicant since 1981 and attested to the applicant's character, responsibility, honesty, and willingness to work.

The applicant provided an affidavit that is signed by [REDACTED] [REDACTED] stated that he first met the applicant in June of 1981 when the applicant was a guest at his home. [REDACTED] asserted that the applicant and he had been friends since meeting and the applicant was a hard working individual with high moral values.

The applicant submitted an affidavit signed by [REDACTED] who declared that she had known the applicant since 1980 and that he was a person of fine character who was responsible honest and hard working.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] indicated that he had known the applicant since 1981 up through January 18, 2004, the date the affidavit was executed. [REDACTED] attested to the applicant's character, responsibility, honesty, and willingness to work and noted that he and the applicant had worked together for an unspecified period during that period they had known each other.

While the affiants, [REDACTED], [REDACTED], and [REDACTED] all indicated they had known the applicant prior to January 1, 1982, none of these affiants provided any direct and verifiable information relating to the applicant's residence in the United States for the period in question.

Subsequent to the filing of his Form I-485 LIFE Act application, the applicant provided the Mexican birth certificates of his seven children. These birth certificates reflect that his son [REDACTED]

was born in Mexico on September 3, 1976, daughter [REDACTED] was born in Mexico on June 6, 1978, daughter [REDACTED] was born in Mexico on August 2, 1980, daughter [REDACTED] was born in Mexico on August 12, 1981, daughter [REDACTED] was born in Mexico on October 10, 1984, son [REDACTED] was born in Mexico on February 21, 1987, and son [REDACTED] was born in Mexico on October 20, 1989.

The record shows that the applicant subsequently appeared for an interview relating to his Form I-485 LIFE Act application at the CIS District Office in Houston, Texas on January 28, 2004. The notes of the interviewing officer reveal the applicant confirmed in sworn testimony that his daughter [REDACTED] had been born in Mexico on October 10, 1984 and his son [REDACTED] had been born in Mexico on February 21, 1987. The applicant further testified that his wife and children had never been to the United States. Consequently, it must be concluded that that the applicant was absent from this country on at least two occasions during the requisite period as he had to travel to Mexico approximately nine months before the birth of each of these children in order for such children to have been conceived. The applicant's testimony at his interview conflicted with his prior testimony at part #35 of the Form I-687 application where the applicant claimed his only absence from this country during the period in question occurred when he traveled to Mexico from June 1, 1987 to June 15, 1987. This discrepancy further undermines the applicant's credibility as well as the credibility of his claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

On April 29, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient credible evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The district director also noted that the credibility of applicant's claim of residence in this country in the requisite period was further undermined as a result of discrepancies in evidence contained in the record and his own testimony relating to his number of absences from United States during the period in question. The applicant was granted thirty days to respond to the notice.

The district director concluded that the applicant failed to respond to the notice of intent to deny and, therefore, denied the Form I-485 LIFE Act application on June 2, 2004. A review of the record reveals that the applicant submitted a response to the notice of intent to deny prior to the issuing of the notice of denial but such response was not acknowledged or addressed by the district director in the notice of denial. Consequently, this response shall be incorporated into the appeal.

On appeal, the applicant reiterated his claim of continuous residence in this country from prior to January 1, 1982 through May 4, 1988. The applicant claimed that he worked for several construction companies here in the United States in the period from 1979 to 1985 including H.K. Pipes. However, the applicant failed to put forth any explanation as to why these additional construction companies such as H.K. Pipes were not listed as employers at part #36 of the Form

I-687 application where applicants were asked to list all employment in the United States since first entry.

The applicant asserted that he believed he was required to list only lengthy absences from this country during the requisite period and did not have to list trips he made to Mexico that were of short duration. The applicant indicated that he informed the individual who prepared his original Form I-687 application of these short trips but this individual did not list these absences. The applicant acknowledged that he had learned that the office that had prepared his Form I-687 application and supporting documents had been accused of fraud but that he had no knowledge of such activities.

The record shows that the AAO subsequently issued a notice to the applicant on January 31, 2008, informing him of adverse information that had been obtained relating to his claim to class membership and his Form I-687 application. Specifically, the applicant was informed that the preparer of his Form I-687 application and application package, [REDACTED], was convicted of violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on December 9, 1993. The record contains evidence demonstrating that these convictions were the result of Operation Desert Deception, a large-scale fraud investigation centered in Las Vegas, Nevada, Phoenix, Arizona, and Los Angeles, California. The operation targeted providers of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits; *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). To date, sixty people, including two former Service officers, have been convicted of legalization fraud, bribery, or tax evasion. In the course of the investigation, 22,000 files, including the applicant's file, were earmarked and segregated as having been filed in Las Vegas, Nevada in the time period under investigation. The applicant was informed that the fact that the preparer of his Form I-687 application was convicted of felony violations for her role in the submission of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits, seriously diminished the credibility of information contained in the applicant's Form I-687 application and supporting documentation. In addition, the AAO informed the applicant that his credibility and the credibility of his claim of residence in this country prior to January 1, 1982 were further diminished because of discrepancies in evidence contained in the record and his own testimony relating to his number of absences from United States during the requisite period. The applicant was granted fifteen days to respond to the notice. However, as of the date of this decision, neither counsel nor the applicant has submitted a statement, brief, or evidence addressing the AAO's notice. Therefore, the record must be considered complete.

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 (BIA 1988).

The absence of sufficiently detailed and credible supporting documentation, adverse information relating to the individual who prepared his Form I-687 application, and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence all seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value and the contradictory nature of his own testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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