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FILE: [REDACTED] Office: NEW YORK Date: MAY 08 2008
MSC 01 292 60320

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. The file has been returned to the National Benefits Center. 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, New York, and the matter 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 through May 4, 1988. Specifically, the director based the denial on glaring discrepancies in the record coupled with affidavits and employment letters that were not legitimate. On appeal, counsel asserts that the director's decision contained numerous mistakes and inconsistencies, and in support of this contention, a brief outlining the applicant's position was submitted.

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).

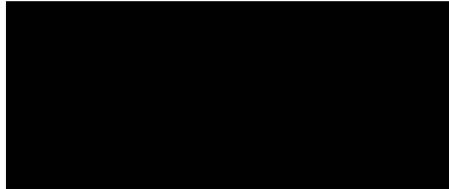
The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N-Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also 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.

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).

In the affidavit for class membership, which he signed under penalty of perjury on January 15, 1991, the applicant stated that he first arrived in the United States in October 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on January 15, 1991, the applicant again stated that he first entered the United States in October 1981, and claimed to live at the following addresses in Texas during the requisite period:

October 1981 to May 1983:
June 1983 to November 1986:
December 1986 to February 1988:
March 1988 to December 1990:



The applicant also provided his employment history on Form I-687, which is listed below:

November 1981 to August 1984:
September 1984 to December 1987:
January 1988 to December 1990:



To establish continuous unlawful residence and physical presence in the United States since before January 1, 1982 through May 4, 1988, the applicant furnished the following evidence:

- (1) Letter dated January 7, 1990 from [REDACTED] claiming that the applicant came to work at his restaurant as a waiter on January 3, 1988 until December 31, 1990.
- (2) Letter dated November 12, 1990 from [REDACTED], claiming that the applicant came to work at China King restaurant as a waiter on September 1, 1984 until December 29, 1987.
- (3) Letter dated October 4, 1990 from [REDACTED] claiming that the applicant came to work at [REDACTED] Barbeque House as a waiter on October 11, 1981 until August 30, 1984.
- (4) Letter dated November 16, 1990 by [REDACTED] claiming that he has known the applicant since December 1982 and that they have been friends since that time.
- (5) Letter dated December 11, 1990 by [REDACTED] claiming that he has known the applicant since October 1981 and that they have been close friends since that time. He claims that they go to the movies, go to each other's houses, and dine out together in restaurants.
- (6) Letter dated October 2, 1990 from [REDACTED], claiming that the applicant purchased a one-way airline ticket to Toronto from his travel agency, Sky Bird, and departed the United States on September 21, 1987.
- (7) Affidavit dated August 2, 2002 by [REDACTED] claiming that he has known the applicant since October 1981, and that he met him for the first time at a party in Dallas in 1981. He further claims that the applicant resided with him from 1981 to 1983. In conclusion, he claims that he still meets him at religious ceremonies.

In the Notice of Intent to Deny (NOID), dated February 24, 2004, the director found that the applicant failed to submit credible evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director specifically focused on the applicant's interview on March 21, 2002, and noted that the applicant was unable to answer the majority of questions he was asked. In addition, the director noted that when asked for supporting documentation, such as utility bills, medical records, money order receipts, the applicant advised that he had none to submit. Finally, the director noted that the attempts by CIS to verify the legitimacy of the letters submitted by [REDACTED], [REDACTED], and [REDACTED] were unsuccessful. The director granted the applicant thirty (30) days to submit additional evidence, but no response was received in the allotted period. Consequently, the director denied the application based on the reasons stated in the NOID on December 28, 2004.

Counsel for the applicant filed an appeal, claiming that "the director's decision is full of mistakes and contradictions." In addition, counsel points out that the NOID was addressed to the applicant at the wrong address, and that the director refers to the wrong dates regarding the date of the applicant's interview and the date the application was filed. Finally, with regard to the director's failed attempts to verify the contents of the letters submitted in support of the application, counsel contends that since the letters were written so long ago, it is not surprising or unexpected that CIS was unable to contact the authors to verify the statements. Counsel further contends that the director's methods of verification were inadequate.

On appeal, the applicant also submitted an affidavit dated January 17, 2005 by [REDACTED] in which Mr. [REDACTED] claims that he has known the applicant since 1981 when he first came to the United States. He claims that they first met in a grocery store in Dallas, and have remained in contact on a regular basis.

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. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

It should first be noted that all three letters from the applicant's alleged employers, and three of the affidavits/letters of reference could not be verified. While CIS recognizes that on occasion, it may be difficult to verify the legitimacy of letters and affidavits prepared in the past due to the change of address of the affiant or the close of a business, the fact that the majority of the applicant's documentary evidence was unverifiable raises questions with regard to the legitimacy of his claims. 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). Although it appears that the majority of the documents submitted are unverifiable and raise credibility questions, and the applicant has failed to submit objective evidence to show the veracity of these documents, the AAO will still analyze the evidence submitted in accordance with the regulations.

Employment Letters

The applicant submitted three employment letters pertaining to the requisite period. The first letter from [REDACTED] of [REDACTED]'s Pasta House, dated January 7, 1990, stated that the applicant worked for the company from January 1988 to December 1990. The second letter from [REDACTED] of China King, dated November 12, 1990, stated that the applicant worked for the company from September 1, 1984 to December 29, 1987. The third letter from [REDACTED] of [REDACTED] Barbeque House, dated October 4, 1990, stated that the applicant worked for the company from October 1981 to August 1984. Even if these letters had been verified, they still fail to meet the evidentiary criteria. None of the letters provided the applicant's address at the time of employment, nor did they show periods of layoff, declare whether the information was taken from company records, or identify the location of such company records. They further did not state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

As stated above, none of the letters provided the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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 applicant's inability to obtain authentic letters of employment seriously detracts from the credibility of his claim of continuous unlawful residence during the requisite period.

Affidavits

The applicant submitted a total of five affidavits and/or letters of reference. Again, as discussed above, three of the five affidavits were deemed to be fraudulent. Specifically, CIS was unable to contact [REDACTED] and [REDACTED] at the addresses and telephone numbers provided to verify the information to which they attested.

In addition, the other two affidavits, from [REDACTED] and [REDACTED], merely claim that they have known the applicant since 1981. Although [REDACTED] claims to have met the applicant at a party, and Mr. [REDACTED] claims to have met the applicant at a grocery store, no additional details regarding the nature of their acquaintance with the applicant has been submitted.

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). Other than identifying the applicant by name, the affiants have failed to comply with the remainder of the guidelines outlined above.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, where the applicant lived during their acquaintance, or

how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.