



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: CHICAGO Date: MAY 08 2008
MSC 02 247 63132

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. 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, Chicago. A subsequent motion to reconsider was granted, and the director upheld the previous denial. 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. On appeal, counsel asserts that the director drew incorrect conclusions regarding the dates of documents submitted, and submits new evidence and assertions for consideration.

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).

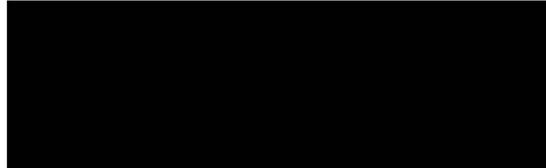
The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating 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 26, 1992, the applicant stated that he first arrived in the United States in January 1980, 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 November 12, 1991, the applicant again stated that he first entered the United States in January 1980, and claimed to live at the following addresses in Illinois during the requisite period:

January 1980 to October 1981:
November 1981 to September 1986:
September 1986 to August 1987:
September 1987 to Present:



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

January 1980 to November 1984: Addressing & Letter Shop, Machine Operator
July 1984 to September 1988: Highland Metals Corporation, Machine Operator

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) Birth Certificate of applicant's daughter, [REDACTED] evidencing her birth in San Diego on April 25, 1986.
- (2) Notarized employment letter dated October 14, 1991 from [REDACTED] of Addressing & Letter Shop, who states that the applicant worked for the company from January 1980 to November 1984.
- (3) Notarized employment letter dated October 28, 1991 from [REDACTED] of Highland Metals Corporation, who states that the applicant worked for the company from July 1984 to September 1988. He claims that the applicant had to be released from employment due to the reduced volume of business at that point in time.
- (4) Affidavit of Residence dated November 25, 1991 by [REDACTED] friend of the applicant, claiming that he knew the applicant when he resided at [REDACTED] from January 1980 to October 1981. He claims to be a friend of the applicant.
- (5) Affidavit of Residence dated November 20, 1991 by [REDACTED] stating that he knew the applicant when he resided at [REDACTED] from November 1, 1981 to September 1, 1986. He claims that he was the owner of the property.
- (6) Affidavit dated November 15, 1991 by [REDACTED], stating that the applicant resided at [REDACTED] from September 5, 1985 to August 31, 1987. She claims that he resided at this address with her, her husband, and her brother-in-law.
- (7) Lease agreement dated September 5, 1986 for the property located at [REDACTED]. The lease lists the following residents as tenants: [REDACTED] and [REDACTED]. The term of the lease is for one year, from September 5, 1986 to August 31, 1987.

- (8) Undated lease agreement for the property located at [REDACTED]. The lease lists the applicant and [REDACTED] as tenants. The term of the lease is for one year, from August 31, 1987 to August 31, 1988.
- (9) Affidavit dated October 25, 1991 by [REDACTED] claiming that the applicant has been her friend since 1981.
- (10) Affidavit dated November 11, 1991 by [REDACTED], claiming that she has known the applicant since January 1981. She claims that he has been living in the same town since 1981. She lists her address as [REDACTED].
- (11) Affidavit dated October 24, 1991 by [REDACTED] claiming that the applicant has been his friend since 1982.
- (12) Affidavit dated October 27, 1991 by [REDACTED] of G & G Spanish-American Groceries, claiming that he has known the applicant since 1982 as a customer of his store.
- (13) Statement dated October 16, 1991 by [REDACTED] of Highwood Medical Center, claiming that the applicant has been a patient of his since September 12, 1983.
- (14) Undated statement by [REDACTED] mechanic, claiming that he has known the applicant since 1984. He claims that the applicant has established good credit and pays on time.
- (15) Letter dated November 22, 1991 by [REDACTED] of Primera Hispana Unida de Cristo (First Spanish United Church of Christ), claiming that the applicant has been coming to the church since 1985.
- (16) Letter dated October 16, 1991 by [REDACTED] of [REDACTED]'s Furniture Mart and [REDACTED]'s Jewelers, claiming that the applicant has been his client since January 1985.
- (17) Notarized letter dated October 26, 1991 by [REDACTED] Trustee of the Highwood Public Library, stating that the applicant has been a patron of the library since June 1987.
- (18) Letter dated November 15, 1991 by [REDACTED] of Carniceria Opteca, claiming that he has been acquainted with the applicant since 1988 when the applicant became one of his clients.
- (19) Affidavit dated October 23, 1991 by [REDACTED] claiming that he has known the applicant since 1983 when the affiant was working at Multiflex Fitness Club.
- (20) Affidavit dated November 23, 1991 by [REDACTED] claiming that she has knowledge that the applicant was in Guatemala from July 14, 1987 to August 2, 1987. She states that she knows he was in Guatemala during this period because when he left he took some things to her relatives, and when he returned he told her about his trip.

- (21) Affidavit dated October 24, 1991 by [REDACTED], claiming that she has known the applicant since 1981. She claims that he was one of her customers.

In the Notice of Intent to Deny (NOID), dated March 28, 2003, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director specifically focused on the period prior to 1985, and asked the applicant to submit additional evidence. 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 March 19, 2004.

Counsel for the applicant filed a motion to reconsider, which was granted by the director on August 15, 2005. In the motion, counsel contends that a timely written response to the director's NOID was submitted by hand on June 30, 2003. In support of this contention, counsel submits a date-stamped copy of the response evidencing it was filed in a timely manner. The response included a letter from counsel dated June 27, 2003, in which she contends that the numerous affidavits submitted prior to the denial were sufficient to establish the applicant's eligibility. She continues by contending that new evidence included with the response further supported a finding of the applicant's eligibility. The response included the following new evidence:

- (1) Affidavit dated June 24, 2003 by the applicant, providing a chronology of his claimed residence and presence in the United States during the requisite period.
- (2) Handwritten medical record from Highland Medical Center. The heading indicates a date of April 12, 1991 with the year "83" written on top of the "91." It is further noted that the handwritten entries on the chart are dated March 26, 1991 and October 16, 1991.
- (3) Letter dated June 20, 2003 by [REDACTED], claiming that the applicant worked for him at J/K Addressing and Letter Shop, Inc. from January 1980 to November 1984.
- (4) Letter dated June 25, 2003 by [REDACTED] Adult Education & Literacy Coordinator of Township High School District 113, claiming that she attempted to locate records of the applicant's attendance at English as a Second Language classes in 1982-1983. She claims that records are only kept for five years, so no official documentation is available. However, she claimed that based on the fact that the applicant could identify the name of the coordinator at the time and the location of his classes, it was "likely" that he was enrolled in classes at the school during the claimed period.

The applicant also submitted an affidavit dated June 17, 2003 by [REDACTED]. However, this affidavit attests the applicant's employment history after the expiration of the relevant period and is therefore not applicable.

The director issued a second denial on September 21, 2005, noting that the additional evidence submitted did not overcome the basis for the original denial. The director concluded that the applicant failed to meet his burden of proof, and denied the application for failure to establish continuous unlawful residence and continuous physical presence in the United States during the requisite period.

On appeal to the AAO, counsel contends that the medical record which the director believes was altered in fact is supported by independent evidence that the applicant was treated at this facility since 1983. In addition, counsel includes an affidavit from the applicant's wife in support of the **applicant's eligibility**. In support of the appeal, the applicant also submits a handwritten statement from [REDACTED] certifying that the applicant has been his patient since September 12, 1983.

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, medical records and affidavits as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

Affidavits

The applicant submitted a large number of affidavits. Many of the affiants stated that they have known the applicant since 1981 or 1982, but fail to provide any additional information, such as the nature of their relationship with the applicant, how they met the applicant, or the frequency of their contact with the applicant. Most of the affiants also omit the address(es) where the applicant resided during their acquaintance.

The applicant provides his address history on Form I-687, and provides two lease agreements and an affidavit to support his claims. One lease agreement confirms his rental of an apartment at [REDACTED] from August 31, 1987 to August 31, 1988. A second lease, for [REDACTED] lists three tenants with the same last name as the applicant for the period from September 5, 1986 to August 31, 1987. An affidavit from one of the listed tenants, [REDACTED] claims that the applicant resided with the three named tenants during that period. No lease or residency information is submitted to corroborate his claimed addresses prior to September of 1986.

It is noted that the affidavit of [REDACTED], who states she has known the applicant since January of 1981, claims that he has been living in the same town since 1981. She does not state the address to which she refers. This statement raises questions because the applicant claims on Form I-687 that he resided at four different addresses, in two different towns, during the relevant period. Her statement, however, contends that she has known him to reside at the same town since 1981. This statement is contradicted by the statement of [REDACTED], who claims that he knew the applicant resided at [REDACTED] in Highland Park, Illinois from January 1980 to October 1981, and [REDACTED], who stated that the applicant resided at [REDACTED], Highwood, Illinois from November 1, 1981 to September 1, 1986.

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. 582, 591-92 (BIA 1988). Without independent evidence, such as rent receipts, leases, or utility bills showing the applicant's actual address(es) of residence during this period, it is impossible to find that these contradicting statements are credible.

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, how they met the applicant 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.

Employment Letters

The applicant submitted three employment letters pertaining to the requisite period. The first letter from [REDACTED] of Addressing & Letter Shop, dated October 14, 1991, stated that the applicant worked for the company from January 1980 to November 1984. A subsequent letter from [REDACTED] dated June 20, 2003 and not written on company letterhead, was submitted on appeal. The second letter attested to the same dates of employment.

Neither of [REDACTED]'s 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). Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. The second letter from [REDACTED] was not on original company letterhead stationery.

The third letter was executed by [REDACTED] of Highland Metals Corporation by October 28, 1991, who stated that the applicant worked for the company from July 1984 to September 1988. He claimed that the applicant had to be released from employment due to the reduced volume of business at that point in time. Like [REDACTED]'s letters, the letter from [REDACTED] did not provide the applicant's address at the time of employment, and further did not declare whether the information provided was taken from company records or identify the location of such company records. In addition, it also did not state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

Medical Records

Finally, counsel on appeal contends that the director drew erroneous conclusions regarding the medical records submitted for the record. The record contains a statement from [REDACTED], dated October 16, 1991, claiming that the applicant has been a patient of his since September 12, 1983. On appeal, a second handwritten statement dated October 21, 2005 is submitted by [REDACTED] attesting to the same. The record also contains a handwritten medical record from Highland Medical Center which appears to be a photocopy of chart entries. The heading indicates a date of April 12, 1991 with the year "83" written on top of the "91." It is further noted that the handwritten entries on the chart are dated March 26, 1991 and October 16, 1991.

Counsel contends on appeal that since the first entry on the chart is March 26, 1991 and the director believes the heading date on the chart to be April 12, 1991, this must be an error on the director's part because the chart would therefore not be in chronological order. Counsel contends that this error, coupled with the affirmations of [REDACTED] who claims that the applicant was a patient since 1983, are sufficient to establish that the applicant was in fact a patient since that time and thus was residing unlawfully in the United States as required. The AAO disagrees.

It is noted upon further review of the chart that the applicant's address is listed as [REDACTED]. As discussed previously, the applicant claimed, and the lease agreement confirms, that he did not reside at [REDACTED] until September 1987. Therefore, the AAO concurs with the director's findings that the medical chart's heading was altered in an attempt to corroborate the statements of [REDACTED]. 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 [REDACTED] submitted two statements claiming that the applicant was a patient, he submitted no medical records or other historical documents to support this statement. Likewise, the applicant submitted no evidence of medical bills or other evidence of treatment received. In addition to the contradictions in the record surrounding the medical claims, there is insufficient evidence to support the statements in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, it is noted that the applicant submitted a letter from [REDACTED] of Primera Hispana Unida de Cristo (First Spanish United Church of Christ), dated November 22, 1991, claiming that the applicant has been coming to the church since 1985. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations of churches are acceptable evidence to support an applicant's claim of residency. However, the regulation requires that such attestations identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address or

addresses where the applicant resided during membership; 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. *See* 8 C.F.R. § 245a.2(d)(3)(v)(A)-(G).

In this matter, the statement from the applicant's alleged church omits most of these requirements. It does not show the applicant's inclusive dates of membership nor does it state the address or addresses where the applicant resided during membership. In addition, the signatory does not provide his title, so it is not clear whether he is an official of the church. Finally, it does not establish how the author knows the applicant and fails to establish the origin of the information being attested to. This document, like the employment letters, will be afforded minimal evidentiary weight.

While the record contains a birth certificate for his daughter evidencing her birth in San Diego, California in April 1986 and a lease agreement showing that the applicant resided at [REDACTED] from August 31, 1987 to August 31, 1988, the record contains minimal evidence addressing the years 1982, 1983, 1984, 1985, and 1986. It further provides minimal information pertaining to the applicant's entry into the United States and his presence therein prior to January 1, 1982. 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.