



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: DALLAS

Date:

MAY 28 2008

MSC 02 243 65563

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 [or Records] 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, Dallas, 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 through May 4, 1988.

On appeal, counsel contends that the applicant has credible and verifiable evidence that he was continuously and physically present in the United States since before January 1, 1982, through May 4, 1988.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: 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 membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

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.

In the Notice of Intent to Deny (NOID), dated on June 15, 2005, the director stated that the applicant failed to submit verifiable evidence to demonstrate his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that additional evidence was received. In the Notice of Decision, dated on April 12, 2006, the director determined that the applicant failed to establish his claim and denied the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of his claim, the applicant submitted the following relevant evidence:

1. A June 25, 2005, affidavit from [REDACTED], who stated that the applicant resided in the United States since September 21, 1981. The affiant stated that when the applicant first arrived he lived in the same apartment complex as the affiant at [REDACTED] Dallas, Texas. The affiant stated that he lived at # [REDACTED] and the applicant lived downstairs. The affiant also stated that he worked at the same restaurant, Loa Chinese Restaurant, as the applicant for 2 years. The affiant further stated that the applicant worked with him at the Hilton Hotel from 1983 through 1984. The affiant stated that the applicant went to Mexico in October 1986 to get married and returned two weeks later with his new wife. The affiant provided his place of residence and telephone

number. This affidavit is affirmed by a second affidavit dated May 31, 2006, from the same affiant.

It is noted that the record contains a copy of the affiant's Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act, signed by the affiant on April 2, 1988. In the affiant's Form I-687, the affiant did not indicate that he ever lived at [REDACTED] or that he ever worked at Loa Chinese Restaurant. In fact, the affiant stated that he resided at [REDACTED] Dallas, Texas, from September 1980 through October 1983. The above affidavit contains discrepancies with the affiant's own statements in his Form I-687. These discrepancies seriously bring into question the credibility of the affiant.

2. A June 26, 2005, affidavit from [REDACTED], who stated that he has known the applicant since 1983 to the present. The affiant stated that he worked with the applicant at the Hilton Hotel for about a year. The affiant provided his place of residence and telephone number. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to state the applicant's place of residence during the requisite period.

It is noted that the record contains the applicant's Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act, dated on August 11, 1990. In his Form I-687, the applicant did not indicate that he ever worked at the Hilton Hotel. The lack of details in the affidavit and the discrepancy regarding the place of employment detract from the credibility of the affiant.

3. A July 11, 2005, affidavit from [REDACTED] who stated that the applicant came to the United States on September 21, 1981. The affiant stated that he worked with the applicant at the Hilton Hotels from 1983 to 1984. The affiant also stated that the applicant left the United States in October 1986 to get married in Mexico and returned two weeks later with his wife. The affiant provided his place of residence and telephone number. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to state the applicant's place of residence during the requisite period. It is further noted that the applicant did not indicate that he ever worked at the Hilton Hotel in his Form I-687. The lack of details in the affidavit and the discrepancy regarding the place of employment detract from the credibility of the affiant.
4. A May 18, 2006, declaration from [REDACTED] who stated that he has known the applicant since 1982 to the present. The declarant stated that he was Pastor at the Cedar Temple Baptist Church (now Iglesia Bautista Central). The declarant stated that the address the applicant gave at that time was [REDACTED], Dallas, Texas 75206.

The declarant stated that the applicant and his family attend this congregation. The declarant provided the address and telephone number of the church. The declarant failed to state all of the addresses where the applicant resided during membership period and to establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). It is also noted that in his Form I-687, Question #34, where asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant did not indicate any affiliation with the declarant's church. The lack of details and the discrepancy casts doubt on the credibility of the declarant.

5. A May 4, 2002, affidavit from [REDACTED], who stated that the applicant is his cousin. The affiant stated that the applicant came to the United States in 1981. The affiant provided his place of address, telephone number, and Texas driver's license. The affiant failed to provide any specific details to substantiate his assertion. The affiant failed to state the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affidavit provides minimal probative value.
6. A May 5, 2002, affidavit from [REDACTED] who stated that she has known the applicant since June 1981 and they met as neighbors. The affiant stated that she married the applicant's cousin in 1985. The affiant provided her place of residence and telephone number. The affiant failed to provide the applicant's place of residence when they met or during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affidavit provides minimal probative value.
7. A May 4, 2002, affidavit from [REDACTED], who stated that he has known the applicant since December 18, 1981. The affiant provided his place of residence, telephone number, and a copy of his Texas driver's license, social security card and permanent resident card. The affiant failed to provide any specific details to substantiate his assertion. The affiant failed to state the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affidavit provides minimal probative value.
8. A May 7, 2002, affidavit from [REDACTED], who stated that he has known the applicant since 1981. The affiant stated that he met the applicant through mutual friends and that they worked together from 1992 through 2000. The affiant provided his place of residence. The affiant failed to provide any specific details to substantiate his assertion. The affiant failed to indicate how he dated his acquaintance with the applicant or how frequently he saw the applicant. The affiant failed to provide the applicant's place of residence during the requisite period. Although not required, the affidavit failed to

include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant. The affidavit provides minimal probative value.

9. A July 20, 1990, affidavit by [REDACTED], who stated that she has known the applicant since September 1981. The affiant stated that she met the applicant through mutual friends. The affiant provided her place of residence. The affiant failed to provide any specific details to substantiate her assertion. The affiant failed to indicate how she dated his acquaintance with the applicant or how frequently she saw the applicant. The affiant failed to provide the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant. The affidavit provides minimal probative value.
10. A January 26, 1995, affidavit from [REDACTED] who stated that he has known the applicant in the United States since September 1981. The affiant provided his place of residence and telephone number. The affiant failed to provide any specific details to substantiate his assertion. The affiant failed to indicate how he dated his acquaintance with the applicant or how frequently he saw the applicant. The affiant failed to provide the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant. The affidavit provides minimal probative value.
11. A July 30, 1990, affidavit from [REDACTED], who stated that the applicant has been working for him since June 1981 until September 1986 in landscaping. The affiant provided her business address. The affidavit failed to provide the applicant's address at the time 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of details detracts from the credibility of the affiant.
12. A July 27, 1990, affidavit from [REDACTED], who stated that the applicant worked with the night cleaning crew since October 1986. The affidavit is on letterhead from Fuddrucker's restaurant. The affiant provided his place of residence and telephone number. The affidavit failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). In addition,

the affiant failed to state his position or title. The lack of details detracts from the credibility of the affiant.

13. A May 5, 2002, affidavit from [REDACTED]. The affiant stated that she has known the applicant since 1981 as neighbors. The affiant also stated that they worked together as dishwashers at Jojo's restaurant for a short time. The affiant provided his telephone number. The affiant failed to provide any specific details to substantiate his assertion. The affiant failed to provide the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affidavit is also inconsistent with the applicant's Form I-687, which does not indicate that the applicant ever worked at [REDACTED] restaurant. The lack of details and discrepancy detract from the credibility of the affiant.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient contemporaneous evidence of entry into the United States before January 1, 1982. None of the above affidavits provide any specific details to corroborate the applicant's claimed entry in June 1981.

The applicant has also failed to provide sufficient credible evidence of continuous unlawful residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Four of the submitted affidavits are inconsistent with the applicant's own statements in his Form I-687. 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). The record contains no independent objective evidence to explain the noted inconsistencies.

The remaining affidavits lack specific details to provide sufficient probative value. 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 and discrepancies, 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