



U.S. Citizenship  
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FILE:

MSC 02 243 68859

Office: LOS ANGELES

Date: NOV 20 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.

John F. Grisson, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Los Angeles, California, reopened sua sponte, and denied again by said Director. The Administrative Appeals Office (AAO) rejected the appeal. The matter will be reopened by the AAO on a Service motion pursuant to 8 C.F.R. § 103.5(a)(8)(b). The appeal will be dismissed.

On March 27, 2008, the AAO rejected the appeal pursuant to 8 C.F.R. § 245a.20(b)(1) as the appeal was untimely filed.

On motion, the AAO has determined that the appeal was received at the Los Angeles Office on February 3, 2006; thereby, the appeal was timely filed. The order rejecting the appeal will be withdrawn and the appeal will be adjudicated on its merits.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel argues that the application was erroneously denied because the applicant was not given the opportunity to explain his employment in Arizona in 1983 and 1984 and “also provided sufficient evidence of 1982 date of entry.” Counsel states that the director failed to properly evaluate all of the evidence the applicant provided and that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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 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 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)(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 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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Affidavits from [REDACTED] and [REDACTED] of Anaheim, California, who attested to the applicant's residence in the United States since 1981 and to his moral character.
- An affidavit from [REDACTED] of Anaheim, California, who attested to the applicant's residence in the United States since 1982 and to his moral character.
- An affidavit from [REDACTED] of Goodyear, Arizona, who indicated that the applicant was employed at Brooks and Schulke Farms in 1981 and 1982.
- Pay stubs from West Coast Personnel, Inc. in Anaheim, California for the pay periods November 7 and 8, 1983, December 2, 1984, September 9, 1985 and November 18, 1986.
- Pay stubs from RHO Company, Inc. in Redmond, Washington for the pay periods June 10 and 17, 1987 and April 28, 1988.

At the time of his LIFE interview, the applicant indicated that he entered the United States in 1981, resided at [REDACTED] in Arizona for four years, and has resided in Anaheim, California since then.

On December 6, 2005, the director issued a Notice of Intent to Deny, which advised the applicant the documents submitted did not establish entry into the United States prior to January 1, 1982 and that he had continuously resided since that date through May 4, 1988. The applicant was advised that there were inconsistencies between his application, oral testimony and documentation. Specifically, the applicant stated that he resided and worked in Arizona on a ranch from 1981 to 1984; however, on his Form I-687 application, the applicant claimed to have resided in Anaheim, California since 1981 and was self-employed during this period. In addition, the letter from [REDACTED] indicated that the applicant resided and was employed at the ranch from 1981 and 1982. The applicant was also advised that the pay stubs from West Coast Personnel, Inc. did not list his name.

The applicant, in response, asserted that he worked in Arizona on a ranch from February 25, 1981 through 1982 as attested by [REDACTED]. The applicant asserted he also did temporary work at the same ranch in 1983 and 1984 during the cotton season. The applicant indicated that he returned to Anaheim, California "to work in the company and next year was same process" and that is the reason why he answered yes in his oral testimony to have worked at the ranch from 1981 to 1984.

The director considered the applicant's statement, but concluded that it did not overcome the grounds for denial. On January 5, 2006, the director denied the application.

The statements issued by the applicant and counsel have been considered. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988. Specifically:

1. On appeal, counsel asserts that the applicant informed the notary, [REDACTED], who prepared his LIFE application, that he had resided in Arizona and California between 1981 and 1984; however, the notary failed to indicate on the application that the applicant had resided in both states. Counsel asserts that when the discrepancy was discovered the notary assured the applicant that he would attend his interview to explain, but the notary failed to do so on December 6, 2005, and the applicant was not able to explain to the interviewing officer that he had resided in both states. Counsel states that in response to the Notice of Intent to Deny, the applicant "with the assistance of the notary [REDACTED]" submitted a letter to the Service explaining his employment at the farm in Goodyear, Arizona from 1981 to 1984. Counsel states that the applicant's letter and previous evidence submitted were sufficient to overcome the grounds for denial.

Counsel's assertions, however, are not supported by the record. Neither the Form I-687 nor the LIFE application was prepared by [REDACTED]. Further, the letter, in response to the Notice of Intent to Deny, does not reflect that [REDACTED] assisted the applicant in preparing the document. It appears that the applicant with the assistance of his former counsel submitted the letter as a Form G-28, Notice of Entry of Appearance as Attorney.

2. Counsel contends that the applicant had asked [REDACTED] to include the months he worked in 1983 and 1984, but [REDACTED] could not recall the exact months that the applicant worked.

Counsel, however, has not provided any documentary evidence to support his assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). If in fact the applicant did work in 1983 and 1984, nothing preventing the affiant from also attesting to this period of employment while indicating that he did not recall the exact months. Further, the employment affidavit from [REDACTED] lacks probative value as he failed to include 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 affiant also failed to declare the applicant's duties with the farm, 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.

3. Regarding the pay stubs that failed to list the applicant's name, counsel asserts that the pay stubs list the applicant's abbreviated last name "Mart" and his social security number is listed.

Counsel's assertion has no merit as the listing of a social security number and an abbreviated last name does not establish that the pay stubs belong to the applicant. No evidence was provided such as a letter from the entity establishing his employment or documentation from the Social Security Administration reflecting the applicant's social security number and wages earned from

1983 to 1986. Furthermore, the applicant did not list this employment on his Form I-687 application.

4. Counsel asserts that the applicant had submitted pay stubs from a variety of agencies where he found temporary work from 1983 to 1987, and that the applicant had also submitted numerous pay stubs, wage and tax statement and personal letter addressed to him at a United States address from September 1987 through May 4, 1988.

The pay stubs from West Coast Personnel, Inc., has been discredited, and the except for the three pay stubs issued in June 1987 and April 1988, the remaining pay stubs and wage and tax statements were issued from October 1989 to March 23, 1993. Further, the envelopes submitted were postmarked in 1989 and 1990.

5. Counsel asserts that the applicant provided detailed affidavits from individuals who have known him since 1981.

██████████ and ██████████ attested to the applicant's residence in 1981 and Juana ██████████ attested to the applicant's residence since 1982. However, none of the affiants made any attestation to the applicant's place of residence in the United States, and did not provide any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. The affidavits from the remaining affiants have no probative value as the affidavits were silent as to dates the affiants met the applicant or to the dates the affiants attested to the applicant's residence in the United States. 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.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Counsel, on appeal, asserts that the applicant “was only out of the country for approximately one month from August 13, 1987 until September 18, 1987. At item 35 of the Form I-687 application, the applicant listed his absence from the United States from August 13, 1987 to September 18, 1987 due to the health of his parents and personal problems.

The applicant, however, indicated on his Form G-325A, Biographic Information, signed May 22, 2002, and August 3, 2005, that he was married in Mexico on June 17, 1987.

The applicant’s failure to disclose this absence from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant’s claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

Finally, the record reflects that on February 25, 1992, the applicant was arrested for driving without a license, a violation of section 12500(a) VC. On April 2, 1992, the applicant was convicted of this misdemeanor offense. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does has a misdemeanor conviction.

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