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U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE: [REDACTED]
MSC 02 018 61986

Office: NEW YORK Date:

OCT 30 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:

SELF-REPRESENTED

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: On June 1, 2007, the Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to submit credible evidence to meet the continuous residence requirements under the LIFE Act. The director noted that the applicant failed to provide evidence of his entry into the United States from Canada on or about December 1981. The director further noted inconsistencies between the applicant's sworn testimony and the affidavits he submitted. Finally the director noted that one affiant did not submit proof of his presence in the United States during the statutory period, that the applicant only submitted a photocopy of a health assessment, and that the assessment only indicated presence in the United States on June 7, 1986.

On appeal, the applicant asserts that the director did not take into account all of the evidence he submitted. The applicant asserts that the director incorrectly discarded the health assessment form simply because it was a photocopy.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)" dated September 22, 1990.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On October 18, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 9, 2004, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

- A "Health Assessment Form" dated June 7, 1986, signed by [REDACTED] from Winston Medican Staffing Services, Inc. The form allows the examining physician to certify that he or she has examined the patient "and determined that he/or she is free of any health impairment which is o[f] potential risk t[o] patients or which might interfere with the performance of hi[s]/ or her duties." Dr. [REDACTED]

commented that the applicant has a normal physical exam. The form lists the applicant's address as [REDACTED] New York, NY 10019. This address is inconsistent with the address listed on the applicant's Form I-687, which lists her address from October 1981 to June 1989 as [REDACTED] New York, NY 10019. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not attempted to explain this inconsistency. Furthermore, the form, while possibly confirming the applicant's presence in the United States on the date the physical exam took place, does not establish his continuous residence in the United States. Given this, the form can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period;

- An "Affidavit of Witness" form, sworn to on October 15, 2001, and signed by [REDACTED], a choreographer from Brooklyn. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in New York from December 1981 to present. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [REDACTED] added: "Mr. [REDACTED] and I first met on Christmas Eve of 1981 in Brooklyn during a party." This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. Mr. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the city where he resided. This letter therefore has minimal weight as evidence of the applicant's continuous residence in the United States during the requisite period;
- An affidavit sworn to on February 5, 2004, from [REDACTED]. Mr. [REDACTED] states that he is the general manager of the Parkview Hotel located at [REDACTED] New York. He states that he has known the applicant since 1981 from visiting his brothers and friends at that hotel, but does not indicate the frequency of the applicant's visits to the hotel. He states that the applicant has always been a pleasure to be around and that through the years they have developed a very special friendship. Although [REDACTED] states that he can vouch for the applicant's residence and continuous physical presence from 1981 to 2004, he does not indicate any personal knowledge of the applicant's entry into the United States and or of the circumstances of the applicant's continuous residence in the United States during those 23 years. Therefore, this affidavit has minimal weight as evidence of the applicant's continuous residence in the United States during the requisite period; and,

- Statements from two acquaintances: an affidavit notarized on February 6, 2004, from [REDACTED], and a handwritten letter dated April 28, 2007, from [REDACTED] of Long Island. The letter from [REDACTED] is not notarized. Although [REDACTED] asserts that he has known the applicant “for a very long time,” he does not indicate exactly how long or when, where, or under what circumstances he met the applicant. And while [REDACTED] and [REDACTED] each asserts that he “can vouch for [the applicant’s] entry into the United States before January 1, 1982,” neither provides any details that would indicate personal knowledge of the applicant’s initial entry into the United States. Mr. [REDACTED] and [REDACTED] state that they can vouch for the applicant’s continuous physical presence in the United States throughout the statutory period, but provide no details regarding the applicant’s addresses or the circumstances of his residence during the 25 years they have known him. Given this lack of detail, these statements can be given minimal weight as evidence of the applicant’s continuous residence or physical presence in the United States during the requisite period.

For the reasons noted above, these documents can be given little evidentiary weight and are of little probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. 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.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have first entered the United States without inspection in October 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

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 primarily on letters and affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.