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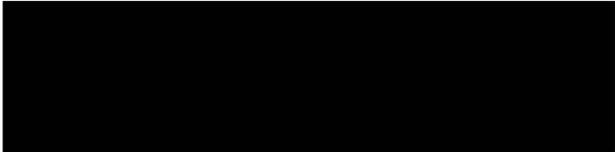
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 217 62456

Office: SAN DIEGO

Date:

OCT 30 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. 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 March 7, 2007, the District Director, San Diego, 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 did not establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988. The director concluded the affidavits the applicant submitted were not verifiable and therefore insufficient to establish his burden of proof.

On appeal, counsel for the applicant asserts that the director did not properly apply the preponderance of the evidence standard to the documentation the applicant submitted. Counsel asserts that the applicant “provided extensive” documentation to support his claim, including seven notarized affidavits, two employment verification letters, and employment records from 1982 to 1986. Counsel asserts that the director’s assertion that the applicant’s evidence was not verifiable was without merit. Counsel points to an affidavit from [REDACTED], the applicant’s former landlord, as a document that should be given considerable evidentiary weight. Counsel asserts that the Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements the applicant submits, together with the employment verification letters, corroborate the applicant’s claim. Counsel also asserts that the director erred in finding that the Social Security Statement submitted by the applicant only showed work in the United States during 2004 and 2005. Counsel asserts that the applicant was paid in cash during the statutory period and that is why his earnings do not appear on his Social Security Statement.

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 February 1992.

On May 5, 2003, the applicant submitted the current application. On March 29, 2005, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of 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.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- 1984, 1985, and 1986 IRS Forms W-2 issued in the applicant's name by [REDACTED] Firma Landscape, Co. and L.S. Swickard operating under the name [REDACTED] Landscape, Co. These forms can be given little evidentiary weight as they contradict information contained in the record, namely the March 3, 2006, Social Security Statement the applicant submitted, which only shows earnings for the applicant in 2004 and 2005. 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). On the one hand, counsel asserts that the Forms W-2 the applicant submits, together with the employment verification letters, corroborate the applicant's claim. On the other hand, counsel asserts that the reason the applicant's earnings during the statutory period do not appear on his Social Security Statement submitted is because the applicant was paid in cash during that period. The Forms W-2 the applicant submitted reflect that the employer withheld several hundred dollars from the applicant's wages and reported several thousand dollars in Social Security wages in 1984, 1985, and 1986. Counsel's explanation of how wages paid to the applicant and reported to the Social Security Administration are not reflected on his recent Social Security Statement is not persuasive. As such, no evidentiary weight can be given to these forms;
- Four "Affidavit of Witness" forms, three of which were sworn to in either May or July 1990, and signed by [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Mr. [REDACTED]'s form was notarized on January 8, 1992. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in San Diego, California. Mr. [REDACTED] filled in from "October 1981 to present" and Mr. [REDACTED] filled in from "November 1981 to present." Mr. [REDACTED] filled in from "February 1986 to present" and Mr. [REDACTED] filled in from "June 30, 1985 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): ____." Mr. [REDACTED] added "I, [REDACTED], hereby testify that Mr. [REDACTED] has been residing in the United States since October of 1981." Mr. [REDACTED] added "We met at a restaurant called the 'La Mission' in National City, CA during the Christmas holidays. Since then we became very good friends and see each other very often. Sometimes when I need help with my car he comes and fixes it. He is a good man and very responsible." Mr. [REDACTED] added: "that Mr. [REDACTED] rented from me a house which was located at [REDACTED], San Diego. That he rented an apartment at [REDACTED], in which he presently resides." Mr. [REDACTED] added: "I certify and inform you that Mr.

has resided in the U. S. since before 1985. We used to work together, and this is how I know of his residence.”

These affidavits, prepared in fill-in-the-blank form, contain no details regarding any relationship with the applicant during the requisite period. The affiants all fail 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. As the applicant's landlord, Mr. [REDACTED] fails to submit corroborating evidence of the applicant's residence in his house, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant. Furthermore, there is no evidence in the record that Mr. [REDACTED] resided at the address listed or owned the residence. Lacking such relevant detail, the affidavits can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period;

- Two “Affidavit” forms, sworn to on May 7, 1993. The forms, signed by [REDACTED] and [REDACTED], allow the affiants to fill in blanks indicating their names, addresses, the applicant's name, and their relationship to the applicant. Both affiants named the applicant as their friend. The form allows the affiant to fill the dates and that address that knew “in fact” that the applicant resided in and maintained a residence in. Mr. [REDACTED] filled in that the applicant lived at [REDACTED] in San Diego, California, from June 1983 until January 1986. Mr. [REDACTED] filled in that the applicant lived at [REDACTED] in San Diego, California, from November 1981 until May 1983. Although the dates and addresses provided are generally consistent with the information provided on the applicant's Form I-687, these statements contain no details about the circumstances of the applicant's residence in the United States other than his address. Neither friend indicates where or when they resided in the United States during the requisite period. They also fail to provide details regarding their claimed relationship with the applicant for over 10 years that would lend credibility to their statements. These letters therefore have minimal weight as evidence of the applicant's residence in the United States during the requisite period; and,
- Two employment verification letters, including a fill-in-the-blank employment verification letter dated January 20, 1988, from [REDACTED], partner at Terra Firma Landscape, Co. In the letter, Mr. [REDACTED] asserts that the applicant has been his employee since 1985. A fill-in-the-blank letter notarized on July 5, 1991, by [REDACTED] Mr. [REDACTED] states that the applicant worked as a salesperson and also performed maintenance Service for Electrolux from November 1986 to the date the letter was written. He states that because he paid the applicant in cash an average of \$175 per week records were not kept.

These letters can be given little evidentiary weight as they fail to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i) . The employers do not provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, declare whether the information was taken from company records, or 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.

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. Despite counsel's assertion regarding the "extensive documentation" the applicant submitted, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains other documents, including 2003 and 2004 IRS Forms 1040, U.S. Individual Income Tax Returns and the applicant's California identification with an expiration date of June 25, 1996. All of this evidence is dated after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

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 November 1981, and to have resided for the duration of the requisite period in San Diego. 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. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

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.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, 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 on documentation that lacks relevant details and 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.

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