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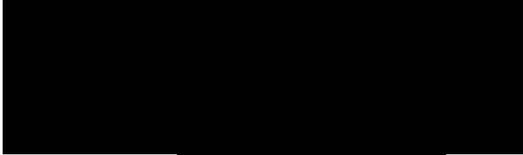
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 024 60491

Office: GARDEN CITY

Date: SEP 09 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.

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, New York, New York, 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 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 asserts that the applicant is unable to submit additional documentation as his home was burglarized several times in Chicago and New York. Counsel asserts that the affidavits from [REDACTED] and [REDACTED] are not to be dismissed as unverifiable without countervailing evidence. Counsel states that the director's decision is conclusory and is based on speculation rather than evidence.

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:

- A notarized affidavit from [REDACTED] of Brooklyn, New York who indicated that the applicant was residing with him from 1986 to 1990 at [REDACTED] Brooklyn, New York.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who indicated he has known the applicant since 1985 and attested to the applicant's departure from the United States from November 1987 to December 1987. The affiant asserted that he was a roommate of the applicant from 1985 to 1990 at [REDACTED] B, Brooklyn, New York.
- A letter dated February 5, 2004, from [REDACTED] vice president of Old B.M. Waterproofing Corp. of New York, New York, who indicated that the applicant was employed as a "cont helper" from 1986 to April 1987.

On April 24, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits from [REDACTED] and [REDACTED] did not "demonstrate how the affiants had personal knowledge of your residency, no documentation was submitted with the affidavits and no telephone contact number was provided rendering the affidavits unverifiable." The applicant was advised that the employment letter from [REDACTED] contradicted his claim on his Form I-687 application to have been employed by Real Construction Co. from May 1985 to November 1987. The applicant was further advised that he had failed to submit any evidence establishing his presence in the United States from 1981 to June 1985.

The director, in issuing her Notice of Intent to Deny, also indicated that "service records indicate that both affiants [REDACTED] and [REDACTED] had a date of entry into the United States of 12/01/1990 which is inconsistent with their statements." While Citizenship and Immigration Services (CIS) records do reflect a date of entry of December 1, 1990, CIS records also reflect that [REDACTED] and [REDACTED] had timely filed an application for temporary resident status under sections 210 and 245a of the Immigration and Nationality Act (the Act), respectively.¹ As such, this finding of the director will be withdrawn.

The director, in denying the application, determined that the applicant failed to respond to the Notice of Intent to Deny. The record, however, reflects that a response was received prior to the issuance of the director's decision. As such, the applicant's response will be considered on appeal.

In response, the applicant asserted that he cannot produce his passport because while crossing the Mexico-United States border, his original passport was "left behind or got destroyed." Regarding the affidavits from [REDACTED] and [REDACTED] the applicant asserted that the affidavits do establish his physical presence in the United States as he resided with both affiants during the period indicated in each affidavit. The applicant

¹ The filing periods for sections 245a and 210 of the Act were May 5, 1987 through May 4, 1988 and June 1, 1987 through November 30, 1988, respectively.

provided a telephone number for [REDACTED] and indicated that [REDACTED] contact information would be provided once he got in touch with the affiant. The applicant provided copies of his airline ticket receipt and boarding pass which reflected his departure from the United States on November 13, 1987.

Regarding the employment letter from Old B.M. Waterproofing Corp. and his claim of employment at Real Construction Co., the applicant asserted:

I would like to state that as an illegal worker I was working temporarily with various companies as a construction helper wherever and whenever I would get the job. For instance if I worked with OLD BM for two weeks they we [sic] give me a week or two off because of less or no work and I would switch to some other company for week or so. I could only get in touch with these two at the time when the evidence was needed.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant and counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The affidavits from [REDACTED] and [REDACTED] may only serve to establish the applicant's presence in the United States since 1985 and 1986, respectively.

Counsel and the applicant indicate that he [the applicant] was burglarized several times in Chicago and New York. However, no evidence such as a police report was provided to corroborate their assertions. Simply 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)).

The applicant claimed on his Form I-687 application to have resided and was employed in Alabama from December 1981 to May 1985. However, the applicant provided no evidence such as an employment letter from his former employer, lease agreements, utility bills or affidavits from affiants who could attest to his residence during this period.

The applicant has not provided a plausible explanation why employment with Old B.M. Waterproofing Corp., was not claimed on his Form I-687 application. Item 36 of the Form I-687 application requests the applicant to list the full name and address of *each* employer during the requisite period. Furthermore, the employment affidavit from [REDACTED] 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 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.

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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that 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.

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