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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: LAS VEGAS

Date:

SEP 22 2008

MSC 02 249 64344

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. 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: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 for the applicant reasserts that the applicant has submitted sufficient credible evidence to establish the requisite continuous residence. With the appeal, counsel submits additional evidence.

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 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.

In the Notice of Intent to Deny (NOID), dated April 26, 2004, the director notified the applicant that he had failed to establish that he had resided continuously in an unlawful status during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated December 29, 2006, the director denied the application for the reasons for denial stated in the NOID. The director noted that the applicant failed to respond to the NOID.

On appeal, counsel asserts that the applicant has sufficient evidence to establish the requisite continuous residence. Counsel states that the applicant's prior representative erred in failing to submit evidence provided by the applicant in response to the NOID. With the appeal, counsel submits additional affidavits, and copies of evidence previously provided.

Although counsel notes that the applicant was not assisted by an attorney but by a representative, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

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. The applicant submitted letters, affidavits, receipts, and envelopes as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits & letters

The applicant submitted the following:

- 1) An affidavit from the applicant, dated January 18, 2007. The applicant attests that he has resided continuously in the United States since 1980, except for a brief absence from November 7, 1987 to December 20, 1987, to get married in Mexico. He states that he resided at [REDACTED] California, from 1981 to 1989. The applicant also states that he had applied for amnesty in 1989, however, that application had been denied because it had been prepared by [REDACTED], a known fraudulent preparer.
- 2) Two affidavits from [REDACTED] notarized on September 6, 1989. One of the affidavits has original signatures, and an original notary seal of [REDACTED]. The affiant states that she has first-hand knowledge that the applicant has resided in the United States since May 1985 because he has been her tenant, at [REDACTED], Los Angeles, California 90018, since that time. The second affidavit (which is a photocopy of [REDACTED]) was altered to read that the affiant has known the applicant since 1981.
- 3) An affidavit from [REDACTED], notarized on March 11, 2001. [REDACTED] states that he has known the applicant since 1980, and that they met in the neighborhood in Los Angeles where they resided. The affiant, however, does not state whether the applicant has been a continuous resident since that time.
- 4) An affidavit from [REDACTED], notarized on January 18, 2007. [REDACTED] states that he has known the applicant since 1980 when he was living in California, that they were good friends, and they saw each other again years later in Nevada. The affiant, however, does not indicate when in 1982 his acquaintance with the applicant began, does not state whether or how he maintained his friendship with the applicant, whether or how frequently he had contact with the applicant, and whether the applicant has been a continuous resident since his acquaintance with the applicant.
- 5) A notarized English translation of an affidavit from [REDACTED] in Spanish, sworn to on September 15, 1989, notarized on January 11, 2007. [REDACTED] attests that he has known the applicant to have resided in the United States from 1978 to 1984; they worked together on a ranch in California at Star Tro [REDACTED], California [REDACTED] and, the applicant continued to work at the ranch in California after he moved to Pheonix, Arizona. The affiant, however, does not state whether or how frequently he had contact with the applicant since 1984, and whether the applicant has been a continuous resident since his acquaintance with the applicant.
- 6) Two affidavits from [REDACTED]. In the first affidavit, notarized on November 2, 1989, by [REDACTED] states that he has known the applicant to have resided in the United States since 1981, and that he and the applicant have lived together since they met. In the second affidavit, dated May 14, 1990, [REDACTED] states that he

first met the applicant in Mexico in December 1987, and does not indicate any acquaintance with the applicant in the United States.

The applicant also submitted twelve (12) monthly rent receipts, signed by _____ for rental of an apartment described as: _____ It is noted that one of the receipts is dated January 11, 1981. Of the remaining receipts there is one (1) each for the years 1982, 1983, and 1984, respectively; three (3) are for 1985; and, two (2) each for the years 1986, 1987, and 1988, respectively.

In addition, the applicant submitted six (6) mail envelopes. One of the envelopes is date-stamped 1985, addressed to a recipient in Mexico, and has a return address for the applicant in Los Angeles, California. It is noted that there are two handwritten inscriptions on the envelope: "Nov - 81," and, "Mexico 1981." Two are addressed to the applicant in Las Vegas, Nevada, and one is addressed to him in Los Angeles, California, but do not have clear postmarked dates; two are date-stamped in 1985, and 1986, and show an address in Los Angeles, California, as the return address for the applicant; and, one with a 1983 postmark stamp shows a return address for the applicant in Los Angeles, California.

The applicant also submitted a translation, dated November 3, 1989, of his birth certificate. The translator is _____, and her signature is notarized by _____

It is noted that none of the applicants state how they dated their acquaintance with the applicant, or how frequently and under what circumstances they met the applicant. 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 affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Documents associated with a known fraudulent preparer, do not meet the "preponderance of the evidence" standard, and are probably untrue. *Matter of E-M-, Supra*. The record reflects that the applicant had submitted fraudulent documentation notarized by _____ who had been a subject of a fraud investigation, and who had been determined to provide fraudulent applications for immigration applicants.

Contrary to counsel's assertion, the applicant has failed to submit sufficient credible evidence to establish his continuous residence in the United States during the requisite period. The applicant has submitted questionable documentation. Specifically, the record reflects that the applicant's initial Form I-687 was prepared by _____ a known fraudulent preparer, and was accompanied by various affidavits, including two affidavits from _____ documents that are known to have been supplied by _____. While the applicant claims that he was not aware that the preparer was involved in preparing fraudulent applications, he submits as evidence of his continuous residence some of the same affidavits submitted with his Form I-687. For example, on

appeal, the applicant submits a photocopy of an affidavit from [REDACTED] (which is a photocopy of [REDACTED] "original" affidavit) that was altered to read that [REDACTED] has known the applicant since 1981 (instead of since 1984 as stated in her "original" affidavit. The two affidavits from [REDACTED] are also inconsistent. In the first affidavit, [REDACTED] states that he has known the applicant to have resided in the United States since 1981, and that he and the applicant lived together since they met. In the second affidavit, however, [REDACTED] states that he first met the applicant in Mexico in December 1987, and does not indicate any acquaintance with the applicant in the United States.

The applicant has failed to provide any explanation for these discrepancies. Any assertion that the applicant cannot be held responsible for documentation prepared or provided by [REDACTED] is without merit. As discussed above, on appeal, the applicant relies on some of the same documentation, and has submitted a copy of an affidavit that has been materially altered.

These unresolved discrepancies cast considerable doubt on whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.