U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: DALLAS Date: SEP 28 2006

MSC 02 284 60178

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, of 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 Interim District Director, Dallas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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, the applicant submits additional evidence of residence during the required period: an affidavit from a "close friend" attesting that the applicant lived in Houston, Texas "off and on" from 1981 until the early 1990's and a letter from a doctor stating that the applicant had been a patient "on and off" from August 1983 through March 1991.

An applicant for permanent resident status 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. 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 petitioner 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 petitioner 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 or petition.

Here, the submitted evidence is not relevant, probative, and credible.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information

which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

In the Notice of Intent to Deny (NOID), the director observed that the applicant submitted "employment letters and affidavits from friends" and concluded that these documents did not constitute "solid physical evidence" of presence during the required period. In the decision, the director found that the applicant had failed "to provide creditable and verifiable evidence" of his presence during the required period.

Neither the NOID nor the director's decision contain sufficient explanation of the deficiencies in the evidence of residency submitted by the applicant, particularly the affidavits and employment letters. Nevertheless, the AAO finds that the applicant has failed to submit relevant, probative and credible evidence of continuous residence in an unlawful status for the entire period of before January 1, 1982 through May 4, 1988.

The applicant has submitted the following evidence in an attempt to establish continuous unlawful residence from before January 1, 1982, as claimed:

(1) An affidavit from [redacted] dated December 14, 2003 stating that the affiant has known the applicant as a friend since he came to and "lived on and off" in Houston, Texas from 1981 until the early 1990's

(2) An affidavit dated June 12, 2003 from [redacted] of [redacted] stating that the applicant worked for the company as an agricultural worker "during January 1985 until February 1986"

(3) An affidavit dated March 22, 2003 from [redacted] stating that the applicant lived at his Dallas, Texas residence from "from 1986 until sometime in 1990"

(4) An affidavit dated March 12, 2003 from [redacted] stating that the applicant lived at her family's Brownsville, Texas residence from November 1983 through March 1986

(5) An affidavit dated April 17, 2002 from [redacted] of [redacted] stating that the applicant worked for the company from June 1986 through September 1989

(6) A letter from [redacted] dated March 19, 1991 stating that the applicant was a patient "on and off" since August of 1983 and attaching the applicant's immunization record containing dated entries for immunizations in 1983, 1984 and 1985.

(7) An auto repair shop receipt dated July 8, 1988 bearing the applicant's name

(8) A signed prescription dated December 3, 1987 from the Baylor University Medical Center in Dallas, Texas

(9) A signed doctor's note dated October 28, 1987 from the Baylor University Medical Center in Dallas, Texas stating that the applicant was seen in the emergency room on that date

(10) Four receipts from a thrift store in Brownsville, Texas (dated August 20, 1983; June 10, 1984; January 5, 1985 and February 1, 1985) bearing the applicant's name

(11) A certificate of participation in the "Summer Olympics" dated July 29, 1982 and signed by [redacted]

(12) Two letters purportedly from the Brownsville Medical Center, dated December 18, 1981 and February 11, 1982, stating that the applicant "was seen in the outpatient clinic" on these dates

The director noted that in response to the NOID, the applicant had "provided color inkjet copies of a 1981 and 1982 medical record", but found this evidence not credible as contemporaneous documentation because the "hospital official indicated that their records only go back six years" and "the phone number on the document is for a gift shop and color ink jets were not in use in 1982."

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the applicant has made no effort to address the issue of the authenticity of hospital records raised by the director. Although the AAO finds nothing in the record indicating that the Brownsville Medical Center maintains records for only six years, the letters do not appear to be on official hospital letterhead and do not contain any information concerning the nature of the applicant's visits to the hospital. Further, the "certificate of participation" submitted by the applicant lacks information allowing verification, such as the name of the entity issuing the certificate and the exact nature of the activity in which the applicant supposedly participated.

The other evidence on record indicating the applicant maintained residence in the United States during the year 1982—the affidavit from [redacted] submitted on appeal—is also not of sufficient probative value. Mr. [redacted] attests only that the applicant lived "on and off" in Houston, Texas from 1981 through the 1990's during which time he saw the applicant on occasion, which does not adequately demonstrate that the applicant maintained continuous residence during this period.

As the applicant has failed to submit sufficient evidence of residency, or to address concerns concerning the credibility of the evidence he submitted, he has therefore not met his burden of proof in showing that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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