U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: ATLANTA Date: DEC 14 2007

MSC 01 338 60070

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 District Director, Atlanta, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988 or that he had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel for the applicant claims that the service erred in its decision, and submits new affidavits in support of the applicant's eligibility.

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).

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).

The applicant claimed on his affidavit for class membership, signed under penalty of perjury on May 14, 1991, that he entered the United States without inspection on January 15, 1979. On his Form I-687, which he also signed under penalty of perjury on February 6, 1991, he claimed to reside at the following address: [redacted] Marietta, GA 30060, from 1980 to 1989. He also claimed to have worked for Los Reyes Mexican Restaurant as a dishwasher from 1981 to the present.

In an attempt to establish continuous unlawful residence since January 1979 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

(1) Affidavit dated May 16, 1991 by [redacted] claiming that he has personal knowledge of the applicant's trip to Mexico on December 25, 1987 because he drove him to the border.

(2) Affidavit dated August 29, 2001 by [redacted] uncle of the applicant, who claims that the applicant entered the United States around October 1981. He claims that the applicant resided with him at the [redacted] in Marietta, Georgia from 1980 to 1989, but that no records are available since the complex was demolished.

(3) Notarized letter dated April 29, 1991 from [redacted] uncle of the applicant, who claims that the applicant resided with him at the [redacted] in Marietta, Georgia until 1986. This statement directly contradicts his August 29, 2001 affidavit as well as the applicant's claim of Form I-687, where it is claimed that they lived at this address until 1989.

(4) Affidavit dated August 29, 2001 by [redacted] General Supervisor of Los Reyes Mexican Restaurant and El Maizal Tortilleria, claiming that the applicant began working for

the restaurants in 1981 and was initially paid in cash. He claims that the applicant worked as a helper beginning in 1981.

(5) Notarized Letter from [redacted] dated April 26, 1991, claiming that the applicant worked for their restaurants since 1981. He also claims that the applicant is a member of the family.

(6) Affidavit dated September 21, 1992 by [redacted] claiming that he has known the applicant in El Paso, Texas, from June 1976 to the present. No additional information is provided.

(7) Lease agreement between [redacted] and [redacted] dated December 11, 1986, for the premises located at [redacted], Marietta, Georgia.

(8) Notarized letter dated April 24, 1991 from [redacted] claiming that she has known the applicant since 1982.

(9) Affidavit dated April 16, 1990 by [redacted] (surname is illegible), claiming that he/she has known the applicant for 5 years. No additional information regarding their relationship is provided.

(10) Affidavit dated April 5, 1991 [redacted] claiming that he has known the applicant since February 1982. Specifically, he claims that from February 1982 to early 1990, the applicant rented a room in his home in Pacoima, California. This claim directly contradicts the claims of the applicant and his uncle, [redacted] who claim that the applicant resided in Marietta, Georgia during this time.

(11) Affidavit dated April 16, 1989 by [redacted] claiming that she has known the applicant for ten years and that he resided at [redacted] from 1981 to 1991. It should be noted that she attests to the applicant's residence in 1991 although the affidavit was sworn in 1989. Furthermore, this affidavit contradicts the applicant's claim that he did not move to this address until 1989.

(12) Handwritten receipt dated October 25, 1987, demonstrating that the applicant, residing at [redacted] Marietta, GA, purchased a 14 karat gold chain and charm.

On January 21, 2005, the director issued a Notice of Intent to Deny (NOID) the application. The district director noted that despite the applicant's claim that he continually resided in the United States since 1979, the record did not contain credible evidence to support a finding that the applicant was continually present from before 1982 through 1988. The applicant failed to respond to the request, and the application was subsequently denied on March 10, 2005.

On appeal, counsel for the applicant contends that contrary to the director's conclusions, the applicant did in fact demonstrate his eligibility. In addition to resubmitting documentation previously contained in the record, counsel also submits new affidavits in support of the applicant's eligibility.

Upon review, the AAO concurs with the director's findings.

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

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 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.

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

The *Matter of E-- M-* provides guidance in assessing evidence of residence, particularly affidavits. *See* 20 I&N Dec. 77. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

The applicant in this case claims he entered the United States without inspection on January 15, 1979. Since he entered without inspection. there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided affidavits to establish that he was present in the United States prior to 1982, but these documents are inconsistent and also contradict the applicant's claimed date of entry. For example, the affidavit of [redacted] claims that the applicant entered the United States around October 1981, nearly two years after the applicant himself claims to have entered the country. In addition, [redacted] claims that the applicant lived with him in Marietta, Georgia as early as 1980, which again contradicts his claims in the affidavit. Furthermore, [redacted] again contradicts himself in another letter, where he claims that the applicant lived with him until 1989 at [redacted], in Marietta, Georgia, when a separate affidavit from [redacted] claims that from February 1982 to early 1990, the applicant rented a room in his home in Pacoima, California. It is incumbent upon the petitioner 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 major inconsistencies in these documents cannot be ignored. Neither the applicant nor counsel addressed or acknowledged these glaring contradictions. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, the affidavits submitted lack essential information to adequately support the applicant's contentions. 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).

Most of the affidavits submitted provide the means at which the affiants can be contacted, but they fail to provide essential information such as the basis of the information they attest to and the nature of their relationship with the applicant. Most of the documents are boilerplate affidavits that are virtually identical to one another. The letters from his alleged employer also omit essential information, such as whether the information pertaining to the applicant's alleged employment is taken from official company records or where those records are located. *See* 8 C.F.R. § 245a.2(d)(3)(i).

These affidavits are insufficient to demonstrate that the applicant unlawfully resided in the United States before January 1, 1982 and continually resided there unlawfully through May 4, 1988. The applicant has not submitted any credible contemporaneous documentation to establish presence in the United States from the time he claimed to have commenced residing in the U.S. through May 4, 1988, such as paystubs, rent receipts, leases, utility bills, or contract in which the applicant was a party. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

Given the absence of contemporaneous documentation and the reliance on affidavits and letters which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, 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.