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

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FILE: [redacted] Office: CHICAGO Date: MAR 16 2007

MSC 02 130 62402

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. Any further inquiry must be made to that office.

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, Chicago, Illinois, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel states that the director did not "properly consider" affidavits submitted by the applicant in support of his application. Counsel submits a brief and additional documentation in support of the appeal.

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. Section 1104(c)(2)(B) 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 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.

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).

In a December 28, 1989 statement, the applicant stated that he "established residence" in the United States in 1981. On his Form I-687, Application for Status as a Temporary Resident, which he signed on December 28, 1989, the applicant did not list any address at which he lived during the requisite period and did not name any employers for which he worked, indicating that he would provide the information at his interview.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. An August 14, 2001 sworn letter from [redacted] in which she stated that she met the applicant on December 10, 1981, and that the applicant worked for her at the Imperial Market from December 15, 1981 through October 14, 1986. She stated that the applicant lived in a mobile home behind the market. [redacted] did not state the source that she relied upon in providing the detailed information regarding the applicant's employment. 8 C.F.R. § 245a.2(d)(3)(i). The record contains no evidence to corroborate that the Imperial Market existed and was doing business during the period stated. The applicant provided no documentary evidence to verify his employment at the Imperial Market or resided in the vicinity of the market.

2. An August 10, 2001 sworn statement from [redacted] in which she stated that the applicant is her nephew, and that she knows that he arrived in the United States on October 29, 1981 because he came to her brother's house, which was near her own.

3. An October 10, 2001 sworn statement from [redacted] in which she stated that the applicant is her brother-in-law, and that he arrived in the United States in November 1981. [redacted] stated that she knows this because the applicant called her to tell her he was in the United States, and that he visited her regularly for about three years. She stated that after he married her sister, they lived with her for approximately three years. [redacted] stated that this was in 1989 and 1990, which would put the applicant arriving in the United States no earlier than 1986 or 1987, instead of 1981 as stated by [redacted]. This information is also inconsistent with that of the applicant in his sworn statement submitted on appeal, which is discussed further below.

4. A December 17, 2001 sworn statement from [redacted], in which she stated that she met the applicant at a flea market in National City, California on November 24, 1986.

5. Envelopes addressed to or from the applicant in the United States dated in 1985 and 1986.[1]

6. A copy of the applicant's June 25, 1985 receipt for a State of California identification card.

7. A copy of a Form SSA-3365-C1, Request to Employee for Social Security Information for the year 1987.

On appeal, the applicant submits a sworn statement in which he, for the first time, lists his employers and residences during the qualifying period. According to this April 2, 2004 statement, the applicant stated that he arrived in the United States on October 29, 1981, and had no place to live for the first "couple of days" until he contacted his uncle, [redacted], and moved in with him for approximately two months. The applicant stated that he then went to work for [redacted] and [redacted] at the Imperial Market, where he was paid in cash and lived rent-free in a mobile home that they owned. He stated that therefore he has no rental application or rental receipts. The applicant also stated that he lived with another man who worked at Imperial Market but cannot remember the man's name. The applicant stated that he was paid a salary of $100 per week and

[1] The applicant also submitted an envelope postmarked in November 1988; however, as this date is outside the qualifying period, the document is not probative in establishing his continuous residency in the United States during the requisite period.

therefore has no evidence of the wages that he earned during the requisite period. The applicant did not state who was responsible for the utilities for the mobile home or provide any evidence of such service to the unit. We also note that [redacted] did not state that rent-free accommodations were part of the applicant's compensation.

The applicant stated that in 1986, he moved in with a friend in an apartment at [redacted] in National City and lived there for approximately two years. The applicant stated that his friend died in 1990, and therefore he cannot obtain his statement. The applicant also stated that his wife, and later his daughter, visited him in the United States on several occasions, last entering on October 28, 1988. The applicant stated that his then pregnant wife lived with her sister at [redacted] in Compton while he stayed with his brother at [redacted] in San Diego, and that he eventually moved in with his wife and her sister in 1989 and lived there until 1990 when he moved his family to Illinois. This information conflicts with that of the applicant's sister-in-law, [redacted], who stated that the applicant lived with her for approximately three years after he married her sister. We note that the applicant stated that he has a son born in the United States on March 29, 1989. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submits an April 7, 2004 declaration from his uncle, [redacted], in which he stated that the applicant stayed with his family for two months after his arrival in the United States in October 1981 and confirmed the applicant's employment at the Imperial Market working for the [redacted] who were [redacted] friends.

Counsel asserts on appeal that, with the detailed affidavits, the applicant has met his burden of proof as outlined in *Matter of E-M-*. However, all of the applicant's supporting statements are from relatives or friends. The applicant submitted no affidavits or third party statements from an objective or independent source or corroborative documentation in support of these statements. Further, the information provided by the applicant's sister-in-law conflicts with that of his own statement submitted on appeal. Additionally, the applicant submitted no contemporaneous documentation of his presence in the United States prior to 1985.

Given this absence of contemporaneous documentation and the unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

We note that the applicant was arrested on May 5, 2000 for domestic battery by the Posen (Illinois) Police Department. According to documentation submitted, the arrest was expunged pursuant to statute on August 23, 2001.

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