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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: DENVER Date: SEP 06 2007

MSC 03 239 62118

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, Denver, Colorado, 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel argues that the director abused his discretion and violated the applicant's right to due process when he: 1) failed to adjudicate the application and review all the evidence in the record, yet based his denial of the application on arbitrary conclusions lacking support in the record; 2) held that the evidence submitted lacked credibility and based his findings on discrepancies and omissions that are not actually present in the record; and 3) drew an adverse inference from the documents submitted and held that the applicant had not met his burden of proof when the documents were credible and amenable to verification and was clear and convincing evidence of the applicant's continuous physical presence during the requisite period.

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 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 record contains a Form I-213, Order of Deportable Alien, dated September 22, 1985, which reflects that on September 22, 1985, the applicant was apprehended by the United States Border Patrol in El Paso, Texas. The applicant claimed to be a citizen of Columbia and listed his name as [redacted] The applicant claimed that he departed Del Valle, Colombia in August 1984 and arrived in Mexico City, Mexico the same day. The applicant further claimed that he spent five days in Mexico City, three months in Guadalajara and three months in Chihuahua, Mexico, arrived in Juarez, Mexico by bus on September 21, 1985 and crossed the border on September 22, 1985. At the time the applicant was served a Form I-221S, Order to Show Cause, the applicant recanted his statement and indicated that he was born in Peru.

At the time of his LIFE interview on March 8, 2004, the applicant indicated on his Form I-485 application that his first entry into the United States was January 13, 1982.

Here, the submitted evidence is not relevant, probative, and credible. 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 Denver, Colorado, who claimed to have been a friend of the applicant since 1981.
- A notarized affidavit from [redacted] of Aurora, Colorado, who indicated she has known the applicant since January 1982.
- A notarized affidavit from [redacted] of Denver, Colorado, who indicated he has known the applicant since January 1982 and attested to the applicant's absence from the United States from June 5, 1987 to June 28, 1987. The affiant asserted the applicant has been residing in the "same area where I live and where I met him."
- A notarized affidavit from [redacted] of Brooklyn, New York, who indicated the applicant was in his employ from February 1987 to 1989 at his place of residence, [redacted]
- A notarized affidavit from [redacted] of Houston, Texas, who indicated the applicant was in his employ as a welder assistant from January 1982 to May 1985 at Feed Processors Inc., in Houston, Texas. The affiant asserted that the applicant used the alias [redacted].
- An additional notarized affidavit from [redacted] who indicated the applicant was in his employ as a welder assistant from June 1985 to December 1986 at A&B Metal MFG Company, Inc. in Houston, Texas. The affiant asserted that the applicant used the alias [redacted]
- Wage and tax statements for 1985 and 1986 from A&B Metal MFG. Company, Inc. addressed to [redacted]
- Wage and tax statements for 1982, 1983, 1984, and 1985 from Feed Processors Inc. addressed to [redacted]
- A document notarized June 25, 1982 regarding an Extension To Existing Contract between representatives of Sunny Side Child Care Center in Houston, Texas and "[redacted] The contract was approved for an additional six months through December 30, 1982 based on the ongoing successful fulfillment of the contractual arrangement between [redacted] and the entity during the previous calendar year.
- A receipt from Sears, Roebuck and Co., addressed to [redacted].

The applicant also submitted a receipt dated July 7, 1982 from Sears, Roebuck and Co. addressed to [redacted], and a letter in the Spanish language from Simdex Technical Institute in Houston, Texas. The receipt

has no probative value or evidentiary weight as the applicant's name is not listed. The letter also has no probative value or evidentiary weight as it is not accompanied by the required English translation. Any document containing foreign language submitted to Citizenship and Immigration Services shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

On April 21, 2004, the director issued a Notice of Intent to Deny, advising the applicant of his signed statement made at the time of his interview to have first entered the United States in January 1982 along with his claim on his Form I-687 application to have been absent from May 1987 to June 1987 from the United States. The applicant was advised of his September 22, 1985 apprehension by the United States Border Patrol and of the statements made at the time of his apprehension. The applicant was advised that he had provided *notarized* affidavits which had raised questions to their authenticity. Namely, the applicant provided affidavits from [redacted] of Brooklyn, New York, [redacted] of Aurora, Colorado, and [redacted] and [redacted] of Denver Colorado; however, the affidavits were notarized by notaries located in Harris County, Texas. The applicant was further advised of his failure to submit credible evidence, such as bills, letters, pay stubs, wage and tax statements or other documents that would substantiate his employment and continuous residence in the United States during the requisite period.

The applicant, in response, asserted that at the end of December 1981, he left Peru and traveled through Mexico and entered the United States without inspection. The applicant asserted he resided in Houston until 1987, and then moved to New York until 1989. The applicant asserted he has been absent from the United States on two occasions; September 5, 1985 to September 22, 1985, and for two and a half weeks in June 1986. Regarding his September 22, 1985 apprehension, the applicant asserted he was afraid when he arrived at the detention center and was informed by other detainees to state a false name and place of birth. The applicant asserted that he subsequently recanted his story and informed the immigration officials of his true identity. The applicant claimed that he never informed the immigration officer that he had been working in Mexico for eight months because it was not true. The applicant asserted, "[a]ll of the questioning that I underwent during my brief detention was focused on whether or not I had used a smuggler to enter the United States." Counsel asserted the applicant was released on his own recognizance once it was apparent that the applicant walked across the border without the assistance of a smuggler.

Regarding the affidavits notarized in Harris County, Texas, the applicant asserted, in part:

> After my friends signed the affidavits, I took the affidavits with me to Houston, where I was putting together my application. I then took the affidavits to a notary public in Houston who notarized all of them for me.
>
> * * *
>
> It was only through my innocent mistake that the affidavits were all notarized by the same person in Houston. The notary public never told me that she was not authorized to notarize the affidavits if she had not seen them being signed. I thought that I was doing the right thing by getting them notarized, and had I known that I was making a mistake I would have remedied the problem and had the affidavits notarized correctly before filing my application with the Immigration and Naturalization Services.

Counsel, in response, asserted that the applicant has established by a preponderance of the evidence that he has been in the United States during the requisite period. Counsel asserted that the contract from Side Child Care Center in Houston, Texas proves by a preponderance of the evidence that the applicant "began employment in the United States prior to January 1, 1982." Counsel asserted that the applicant should not be punished for his innocent mistake regarding how to properly notarize a document. Counsel submitted the following:

- A printout from the Social Security Administration in Denver, Colorado, which reflected the applicant's earnings subsequent to requisite period.
- An additional copy of the letter from Simdex Technical Institute along with the required English translation. The letter from a representative of admission advises [redacted] not to forget about the class of Soldering commencing on October 29, 1982 at 6:00 p.m.
- An affidavit written in the Spanish language with the required English translation from a brother-in-law, [redacted] of Peru, who attested to the applicant's returned to Peru on September 5, 1985 due to his mother's health. The affiant asserted that the applicant remained in Peru for 13 days.
- An affidavit written in the Spanish language with the required English translation from a sister, [redacted] Torres of Peru, who indicated the applicant departed the United States in June 1986 and remained in Peru for three weeks.

The director, in denying the application, noted that the documents from Sunny Side Child Care Center, Simdex Technical Institute, and Sears, Roebuck and Co. could not be considered credible because the applicant: 1) did not claim employment with Sunny Side Child Care Center on his Form I-687 application and did not submit any evidence to support the contents of the letter; 2) failed to provide evidence establishing that he and [redacted] are one and the same person; and 3) failed to provide evidence from Simdex Technical Institute establishing that he and [redacted] are one and the same person.

On appeal, counsel submits a statement from [redacted] of Denver, Colorado, who indicated that he had purchased a car battery from Sears in the summer of 1982 that was placed in the vehicle the applicant and [redacted] (who was a friend of the affiant) was driving. The affiant contends that the applicant and [redacted] began arguing who would pay him for the battery and "[the applicant] won the argument and so I gave him the receipt."

On appeal, counsel provides a summary of the applicant's first arrival in the United States, his two absences from the United States in 1985 and 1986, his apprehension in 1985 by the Border Patrol, his filing of his Form I-687 application in 1991 along with the questionable affidavits notarized in Harris County, Texas, and the documents submitted in response to the Notice of Intent to Deny.

Counsel asserts that the director contradicts himself numerous times in stating what the applicant allegedly stated to the United States Customs and Border Patrol at the time of his apprehension. This was a harmless error on behalf of the director as he inadvertently noted in the Notice of Intent to Deny that the applicant spent eight months instead of eleven months working in Mexico as noted in his Notice of Decision. The fact remains that the information outlined in both decisions were obtained from the Form I-221S that was signed and dated by a Border Patrol agent on September 22, 1985. The applicant has not provided an explanation for his failure to disclose his 1985 absence on his Form I-687 application. These fact diminishes the credibility of his claim to have continuously resided in the United States prior to September 1985.

The statements of the applicant regarding the affidavits along with the statements of counsel regarding the amount and sufficiency of the evidence of residence have been considered. However, the evidence submitted does not establish with reasonable probability that the applicant was already in the country before January 1, 1982 and that he was residing in continuously unlawful status through May 4, 1988.

Counsel contends that the applicant's Form I-687 application was prepared with the assistance of a notario who did not fill out the form completely, and the absence of the applicant's employment at Sunny Side Child Care Center was due to " notario's failure" to list said employment on the Form I-687 application.

The Form I-687 application, however, does not reflect that anyone other than the applicant completed the application, as no information is listed in items 48 and 50 of the application; items 48 and 50 of the application requests the name, address and signature of the person preparing the form. Furthermore, the contract was between the entity and an individual named '[redacted]" The applicant did not claim on his Form I-687 application that he was known by this alias and has not provided any evidence from this entity to establish that he and [redacted] are one and the same person.

The identities of [redacted] were not established at the time their respective affidavits were notarized and, therefore, the affidavits no probative value or evidentiary weight. As the affidavits from [redacted] have been discredited, it is reasonable to expect that the applicant would provide properly executed notarized affidavits from these affiants. However, no new affidavits have been submitted from the affiants or any other affiant in attempt to establish the applicant's continuous residence and physical presence during the requisite period.

Assuming, arguendo, that these affidavits were properly notarized, they would still lack probative value and evidentiary weight as none of the affiants provided any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. In addition, [redacted] in their affidavits, listed a Houston address for the applicant that was not claimed as a place of residence on his Form I-687 application. [redacted] claimed to have known the applicant since January 1982, and indicated that the applicant resided "in the same area where I live and where I met him." [redacted] listed his residence in Denver, Colorado and the applicant: a) on his Form I-687 application did not claim residence in Colorado until February 1987; and b) in his affidavit submitted in response to the Notice of Intent to Deny did not claim residence in Colorado until 1989. Mr. [redacted] indicated that the applicant was in his employ from February 1987 to 1989 in Brooklyn, New, York. The applicant, however, did not claim any residence in New York on his Form I-687 application during this time period.

The applicant claimed on his Form I-687 application to have resided in Houston, Texas from January 1982 to January 1987 and stated, in his affidavit, that he went to Houston in 1991 because "most of the evidence of his presence" occurred in Houston. However, except for the employment affidavits from [redacted] the applicant submitted no evidence such as lease agreements, utility bills, or affidavits from affiants residing in Houston to corroborate his residences from January 1982 to January 1987.

Finally, the applicant did not claim any residence on his Form I-687 application in the United States prior to January 1982.

These facts tend to establish that the applicant utilized these documents in a fraudulent manner in an attempt to support his claim of residence in the United States prior to January 1, 1982. By engaging in such an action,

the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

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).

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.