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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CHICAGO Date: MAY 30 2008

MSC 02 309 60378

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 been "illegally and physically present" in the United States from January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant has met his burden of proof, and that his statements on his asylum request was the result of fraud committed by the individual who prepared the document.

We note that the director determined that the applicant had failed to establish that he was physically present in the United States from January 1, 1982, to May 4, 1988. However, an applicant for permanent resident status under the LIFE Act 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). Under section 1104(c)(2)(C) of the LIFE Act, the applicant must establish continuous physical presence only from November 6, 1986 through May 4, 1988.

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).

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.

On a form to determine class membership, which he signed under penalty of perjury on June 3, 1994, the applicant stated that he first entered the United States in December 1981, when he crossed the border without inspection. The applicant also stated that he left the United States in July of 1987 and 1988, May 1991, and June 1993. The applicant stated that he returned in the month following each absence.

On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on June 3, 1994, the applicant stated that he lived at [redacted] in Chicago, Illinois from December 1981 to December 1987, and at [redacted] in Elgin, Illinois from January to October 1988. The applicant stated that he worked as a laborer for [redacted]s Auto Repair in Chicago from January 1983 to December 1987, and at Western Drywall Company from January 1988 to September 1989.

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

1. A May 16, 1994, notarized statement from [redacted] in which he stated that had known the applicant since 1983, and that the applicant "is employed" at [redacted]'s Auto Repair. In a June 1, 1994, sworn declaration, [redacted]o stated that the applicant left the United States from July to August 1987. Mr [redacted] did not indicate the basis of his knowledge of the applicant's absence from the United States, and did not state the circumstances surrounding his initial acquaintance with the applicant or how he dated their relationship. We note that [redacted]o stated in his May 1994 statement that the applicant "is employed" at [redacted]s Auto Repair; however, the applicant stated that he worked at the repair shop until December 1987. Additionally, neither of [redacted]'s statements provided information about where he could be contacted in order to verify the information he provided.

2. A February 26, 1994, sworn statement from [redacted] in which he stated that he had known the applicant for 10 years "in [redacted]s Auto Repair," and that the applicant repaired his car every time he had a problem. We note that statement indicates that the applicant was working at [redacted]'s Auto Repair at the time he made his statement; however, the applicant stated that he worked at the repair shop until December 1987.

3. Pay stubs for the applicant from Western Drywall dated in 1988.

4. A copy of a 1988 Form W-2, Wage and Tax Statement, issued to the applicant by Western Drywall Company, a copy of the applicant's Form 1040EZ, Income Tax Return for Single filers with no dependents, and a copy of a Form IL 1040, Illinois Individual Income Tax Return, for the year 1988. The record does not indicate that the tax returns were ever filed with the appropriate tax authorities.

The applicant submitted several photographs; however, there is nothing in the photographs that indicate that they were made in the United States during the requisite period. Additionally, the applicant submitted other documents that are dated subsequent to May 4, 1988; therefore, they are not evidence of his residence in the United States during the required period.

In a Notice of Intent to Deny (NOID) dated February 13, 2006, the director informed the applicant that his employment with [redacted]'s Auto Repair could not be corroborated, as [redacted]o provided no contact

information and the district office was unable to verify the existence of the auto repair. The director also noted that on a Form I-589, Request for Asylum in the United States, which he signed under penalty of perjury on October 26, 1993, the applicant stated that he arrived in the United States in July 1992, and had never before been to the United States. The applicant was notified that he had 30 days in which to provide information to overcome these issues and establish that he was eligible for adjustment of status under the LIFE Act.

In response to the NOID, the applicant submitted the following additional documentation:

5. A copy of an August 23, 2003, affidavit from [redacted] in which she stated that she met the applicant in 1981 and that they got together for family cookouts. Ms. [redacted] did not state her relationship with the applicant and did not indicate the circumstances surrounding her initial acquaintance with the applicant or how she dated her acquaintance with him.

6. A copy of an August 25, 2003, affidavit from [redacted], in which he stated that he met the applicant in 1981, and that they would have family reunions. The affiant did not state his relationship to the applicant and did not indicate the circumstances surrounding his initial acquaintance with the applicant or how he dated his relationship with him.

7. A copy of an August 23, 2003, affidavit from [redacted] in which he stated that he met the applicant in 1981, and that they got together to live in the same apartment. The affiant did not indicate the circumstances surrounding his initial acquaintance with the applicant and did not state which residence they shared. We note that the applicant stated that he arrived in the United States in December 1981, which would have made him, according to his date of birth of December 8, 1967, 14 years old at the time of his initial entry into the United States. The affiant indicated that he is a year younger than the applicant.

8. A February 26, 2006, sworn statement from [redacted], in which he repeated the information of his earlier statements, and gave his address and telephone number.

The applicant did not address the conflicting information provided in his Form I-589 asylum request.

The director determined that the applicant had failed to establish by a preponderance of the evidence that he was eligible for adjustment of status under the LIFE Act and denied the application on March 20, 2006.

On appeal, counsel asserts that the length of time that has elapsed since the applicant first entered the Untied States "obviously makes it difficult for most people to produce primary evidence," and that pursuant to 8 C.F.R. § 103.2(b), "the absence of primary evidence can be overcome by the submission of secondary evidence and the absence of secondary evidence can be overcome by 'two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances.'" Counsel argues that the applicant has submitted five notarized affidavits from those who had personal knowledge of his continuous presence in the United States and therefore he has exceeded the requirements of the regulations.

Counsel's argument is without merit. The regulation at 8 C.F.R. § 103.2(b) addresses the availability of "required evidence," such as a birth certificate or marriage certificate. Further, before CIS will accept secondary or other evidence in lieu of required evidence, the applicant must demonstrate that the required

primary evidence does not exist. Neither of these situations exists in the present case, as the applicant has not failed to provide any of the required evidence and has not demonstrated that primary evidence of his presence and residence in the United States does not exist.

Nonetheless, pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), affidavits in certain cases can effectively meet the preponderance of evidence standard. However, as previously stated, the evidence must be evaluated not only by the quantity but also by its quality. *Matter of E-M-*, 20 I&N Dec. 77. [redacted] and [redacted] both state that they have known the applicant since 1981; however, neither states how they made the applicant's acquaintance. They further state that they attended family gatherings with the applicant, thus implying that he was related to them. However, neither identifies the relationship with the applicant or when he began attending the family gatherings. Mr. [redacted] stated that he and the applicant got together to share a residence. However, he does not identify the residence or when the two became housemates. The applicant submitted no contemporaneous documentation to verify that he lived at any particular address with [redacted] or at any other location until 1988, with the submission of a Form W-2 and income tax returns. [redacted] stated that he had known the applicant since 1983, when the applicant worked at [redacted]s Auto Repair. However, he did not state how he dated his acquaintance with the a licant. Additionally, in his May 1994 statement, [redacted] stated that the applicant "resides at [redacted]y in Elgin, IL" and "is employed" at Rivera's Auto Repair, implying that the applicant, in 1994, was currently employed by the repair shop. However, the applicant stated that he worked at the repair shop only until December 1987. Similarly, [redacted] implied that the applicant was working in the car repair shop in 1994. Further, even though the director notified the applicant that it could not verify that [redacted]s Auto Repair ever existed, the applicant did not address this issue in any of his submissions.

Finally, on appeal, the applicant states that the individual who completed his Form I-589 asylum request defrauded him, and that he was unaware that she had stated on the form that he entered the United States in 1992, or even that she had had him file an asylum request. 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 submitted a copy of his 1988 Form W-2, copies of money order receipts dated in 1990 and 1991, and copies of his electric bills from Commonwealth Edison, for October and December 1990. Accordingly, the applicant has submitted competent, objective establishing that he was present and residing in the United States prior to 1992.

However, given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.

Beyond the decision of the director, the record reflects the applicant has been convicted of the following offenses:

1. On February 17, 1993, the applicant was convicted of driving under the influence of alcohol. Case no. [redacted]

2. On December 19, 1996, the applicant was convicted of driving under the influence of alcohol. Case no. [redacted]

3. On August 31, 1998, the applicant was convicted of driving on a revoked license. Case no. [redacted]

4. On July 20, 1999, the applicant was convicted of knowingly possessing a fraudulent driver's license or permit. Case no. [redacted]

5. On July 20, 1999, the applicant was convicted of driving on a revoked license. Case no. [redacted]

6. On February 22, 2000, the applicant was convicted of driving on a revoked license. Case no. [redacted]

The regulation at 8 C.F.R. § 245a.11 provides that an eligible alien may adjust status to that of a lawful permanent residence provided he or she has not been convicted of any felony or of three or more misdemeanors committed in the United States.

As the applicant has been convicted of three or more misdemeanors, he is ineligible for adjustment of status under the LIFE Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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