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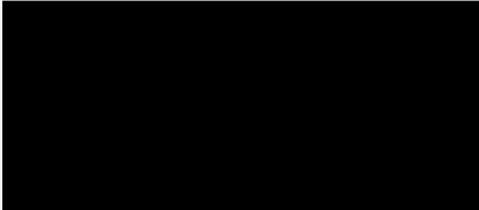
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 242 64004

Office: DALLAS

Date:

DEC 22 2006

IN RE:

Applicant:



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:



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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) 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 has failed to: 1) properly define a "preponderance of the evidence;" 2) conduct an examination of each piece of relevant evidence; and 3) challenge the credibility of the applicant or the authenticity of the documents with specific reasoning. Counsel asserts that the applicant has established by a preponderance of the evidence continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides additional documents along with previously submitted documents 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. 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).

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 throughout the application process:

- A notarized statement dated July 5, 1990 from [REDACTED] of Dallas, Texas, who asserted to the applicant's residence in Florida from 1983 to 1986, and then again in Dallas, Texas. Mr. [REDACTED] asserted that he has remained in contact with the applicant since he arrived in Dallas.
- A notarized statement dated July 5, 1990 from [REDACTED] of Crow Contractors in Ennis, Texas, who indicated the applicant was in his employ as a cement finish helper from February 1988 to March 1990
- A notarized statement dated July 2, 1990 from [REDACTED] of Dallas, Texas, who indicated that he met the applicant in May 1982 while picking tomatoes and attested to the applicant's employment in Florida through 1987. [REDACTED] asserted that he met the applicant again in Ennis, Texas during Christmas 1988 and attends the same church as the applicant.
- A notarized statement dated July 2, 1990 from [REDACTED] of Dallas, Texas, who indicated that he was a tomato contractor for [REDACTED] in Florida City, Florida. [REDACTED] asserted that the applicant was employed as a tomato picker during the months January to April and September to December from 1982 to 1987. [REDACTED] asserted that no records were kept in the applicant's name because he "picked with his uncle's number due to his age." [REDACTED] stated that the applicant resided with his family at a trailer camp and also worked for other crew leaders during the time he did not work for him.
- An affidavit notarized August 27, 2003, from [REDACTED] of Dallas, Texas, who indicated that he has known the applicant since 1982. [REDACTED] asserted that during his employment at a restaurant named [REDACTED] in Dallas, Texas, the applicant was employed during 1982 for one week, then again in 1984 for approximately six weeks and lastly, in 1986 from June to August. [REDACTED] asserted that the applicant left this job due to "a great opportunity in Florida." [REDACTED] asserted that he did see the applicant again until 1988 and has remained in contact with the applicant since that time.
- An affidavit notarized May 17, 2002 and a letter dated August 6, 2003 from [REDACTED] of Dallas, Texas, who indicated that in December 1981, the applicant was at [REDACTED] cleaning stalls for [REDACTED]. [REDACTED] asserted that in 1982, the applicant departed to Florida and she did not see the applicant again until January 1988 at [REDACTED]. [REDACTED] asserted that the applicant has been in her employ at a tape edge machine operator at Allied National Mattress, Inc. in Dallas, Texas since January 2002.
- An affidavit notarized May 17, 2002 from [REDACTED] of Seagoville, Texas, who indicated, "I know of [the applicant] holding a horse that I was sitting on at [REDACTED] in Dec. of 1981. Which he let the lead rope go and the horse got spoked [sic] and ran off with me on its back and I fell off broke my collar bone in three spots." [REDACTED] asserted that the next month the applicant moved to Florida and returned to Texas in January 1988.
- An affidavit notarized January 20, 2003 from [REDACTED] of Cleveland, Texas, who indicated that he worked with the applicant and his family in Florida commencing in 1982. [REDACTED] asserted that although he left for Texas in 1983, on several occasions until 1987 he returned to Florida during the tomato picking seasons where he was employed by "[REDACTED]". [REDACTED] asserted that he occasionally see the applicant during his visits to Dallas.

- An affidavit notarized January 30, 2003, from a brother, [REDACTED] who attested to the applicant's employment picking tomatoes at [REDACTED] in Florida in January 1982 through January 1988. [REDACTED] asserted that he left Florida in 1983, but returned in 1985. [REDACTED] asserted he and the applicant departed Florida to Texas in January 1988 and resided at [REDACTED], Balch Springs, Texas.
- An affidavit notarized February 1, 2003 from [REDACTED] of Hutchins, Texas, who indicated that he worked with the applicant for approximately two years at [REDACTED] in Florida City, Florida. [REDACTED] asserted that he and the applicant moved to Texas in January 1988 and resided together at [REDACTED] Balch Springs, Texas. [REDACTED] asserted that he has remained in contact with the applicant since that time.
- A PS Form 3806, receipt for registered mail postmarked June 4, 1987
- A money order receipt dated July 6, 1984 which listed the address, [REDACTED]
- A lay-a-way receipt from [REDACTED] in Dallas, Texas dated December 7, 1983.
- A receipt from [REDACTED] in Dallas, Texas dated May 18, 1982 which listed the address [REDACTED]

On appeal, counsel submits:

- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated that he met the applicant on January 1, 1988 at San Augustine Church. [REDACTED] asserts that he has remained friends with the applicant since that time.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated that he and the applicant worked at Cardinal Puffs in Dallas, Texas in the beginning of 1982. [REDACTED] asserted that the applicant went to Florida the same year, but visited Dallas from time to time. [REDACTED] asserted that he did not see the applicant again until 1988 and has remained in contact with him since that time.

The director, in denying the application, noted that the applicant had provided copies of receipts that were not credible. Specifically, "Cowboy Comfort did not become a company until 1993, so the 1984 receipt is questionable, in addition to the modified dates on the EZ Pawn receipt."

A review of the record, however, does not support the director's finding regarding Cowboy Comfort. The record contains a Form I-213, Record of Deportable Alien, dated November 19, 1992, which indicates that the applicant was arrested while working at "Cowboy Comfort," a spring mattress refurbishing company in Balch Springs, Texas.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant resided in the United States prior to January 1, 1982 through May 4, 1988. Specifically:

1. The applicant did not claim any address in the United States prior to January 1982 on his Form I-687 application. In addition, on his Form for Determination of Class Membership dated July 12, 1990, the applicant indicated that he first entered the United States in January 1982.

These factors raise questions about the authenticity of the affidavits the applicant has presented in attempt to establish entry in the United States prior to January 1, 1982. As such, it is determined that the affidavits from Ginger Todd and Jenifer Clifton are not plausible, credible, and consistent both internally and with the other evidence of record.

2. On the money order receipt dated July 6, 1984, the applicant listed his address as 10 Cowboy Comfort; however, according to his sworn statement, he did not commenced working at Cowboy Comfort until 1992.
3. The receipt for registered mail lists the applicant's address in Dallas Texas at 113 Tamalpais; however, the applicant did not claim to have resided at this residence on his Form I-687 application.
4. Although a review of the receipt from E-Z Pawn does not reveal any "modified dates," the receipt lists the applicant's address at [REDACTED] Dallas, Texas. The applicant, however, did not claim to have resided at this residence on his Form I-687 application. The receipt further raises questions to its credibility as the applicant was only 11 years old at the time he purchased two 14kt nugget rings at this entity.

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.