



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 113 64573

Office: LOS ANGELES

Date: JUL 13 2006

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director concluded that the applicant's documentation submitted in response to the Notice of Intent to Deny was at variance with the information initially provided on his Form I-687 application, thereby casting credibility issues on his claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As such, the director denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel addresses each inconsistency the director put forth in her notice. Counsel provides copies of 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).

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:

- Several car registration forms issued in 1987 from the California Department of Motor Vehicles (DMV) and addressed to the applicant's Long Beach addresses at [REDACTED]
- A California DMV receipt for a driver license dated September 22, 1986 listing the applicant's [REDACTED]; a DMV Form DL-719 dated November 29, 1988, which indicated that an identification card and driver license in the applicant's name were issued in 1986; and two DMV reports reflecting parking violations during 1987 and on April 6, 1988.
- A notarized affidavit dated May 7, 1990 from [REDACTED] drywall constructor, who indicated that the applicant was in his employ from November 1987 to September 1988.
- An affidavit notarized May 4, 1990 from [REDACTED] general partner of [REDACTED] in Carson, California, who indicated that the applicant was employed by the company as a sub-contractor machinist from July 1981 through November 1986 on a cash basis.
- A letter dated July 5, 2001 from [REDACTED] and Sr., owners of [REDACTED] Company in Lomita, California, who indicated that the applicant was employed as an independent worker from June 1981 to November 1985.
- An affidavit notarized July 20, 1990 from [REDACTED] who attested to the applicant's Long Beach residence at [REDACTED] since 1985. Mr. [REDACTED] asserted that the owner of the property addressed all receipts in his name.
- An affidavit notarized July 20, 1990 from [REDACTED] who indicated that he rented property at [REDACTED] Long Beach to the applicant and [REDACTED] for the last five years. Mr. [REDACTED] indicated that all receipts were addressed to [REDACTED]
- An additional statement dated November 11, 2001 from [REDACTED] who asserted that the applicant and his family had resided at his property, [REDACTED] Long Beach from November 1985 to September 1998.
- A letter dated July 20, 1990 from Father [REDACTED] pastor at the Holy Family Church in Wilmington, California, who indicated that the applicant has been a member of the parish since June 1981, and listed the applicant's current residence as [REDACTED] Long Beach.
- A statement from a brother [REDACTED] who attested to the applicant's entry into the United States in June 1981. Mr. [REDACTED] indicated that the applicant resided with him at [REDACTED] Long Beach for five years until November 1985. Mr. [REDACTED] attested to the applicant's subsequent residence at [REDACTED] for 13 years.
- Several copies and original receipts containing the applicant's name dated 1981 through 1987.

The applicant also submitted a receipt dated March 3, 1982, which listed his name and address at [REDACTED]. Said receipt raises questions as to its validity as the applicant did not reside at this location until 1985.

On April 20, 2004, the director issued a Form I-72, advising the applicant to submit proof of his continuous presence in the United States from 1981 to 1988. Counsel, in response, submitted several photographs he claimed were taken in the United States during 1981 to 1988. As previously noted by the director, in her Notice of Intent to Deny, the photographs have no identifying evidence that could be extracted which would serve to either prove or imply that photograph was taken in the United States and during the requisite period.

The director issued a Notice of Intent to Deny dated July 6, 2004, advising the applicant that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through May 4, 1988. Counsel, in response, asserted that the documentation the applicant has presented provides overwhelming proof of his continuous residence during the requisite period and beyond. Counsel stated that the affiants have declared under penalty of perjury to the events and facts that the applicant has continuously resided in Wilmington and Long Beach, California area since 1981. Counsel claimed that director has either failed or declined to interview or question the affiants under oath to corroborate said information. Counsel asserted that the applicant had met his burden by establishing by a preponderance of the evidence his eligibility for permanent resident status. Counsel provided copies of the affiants' affidavits that were previously submitted.

The director, in denying the application, noted that the affidavits submitted from [redacted] and Mr. [redacted] and his son contradicted the applicant's claim on his Form I-687 application. Specifically, Mr. [redacted] and his son indicated that the applicant worked as an independent worker at the [redacted] Construction Company from June 1981 to November 1985; however, the applicant claimed on his Form I-687 application that he was employed by [redacted] during this time period. In addition, [redacted] indicated that the applicant resided with him at [redacted] Long Beach from June 1981 to November 1985; however, the applicant claimed on his Form I-687 application to have resided at [redacted] Wilmington from November 1981 to August 1985, and at [redacted] Long Beach from August 1985 to the present (1990). [redacted] testimony is consistent with the applicant's in that the applicant did not indicate that he had ever resided at [redacted] but rather, at [redacted]. Further the applicant indicated that he lived in Wilmington from 1981 to 1985, not in Long Beach as indicated by [redacted].

Regarding the [redacted] letter, counsel, on appeal, asserts in part:

The fact that [the applicant] had worked in two different places doesn't indicate that there is a contradiction in the Rebuttal. Mr. [redacted] owner of the [redacted] Construction Company, in his letter, stated that [the applicant] was an independent contractor. His duties included to the various jobs for Mr. [redacted] but he was never an employee of Mr. [redacted]. His failure to include the [redacted] Construction Company in his I-687 was a **harmless error** but not a contradiction as to his employment record.

In addition, [the applicant] primary language is Spanish. When [the applicant] filed the I-687, he was not aware that he should have mentioned that he worked for Mr. [redacted] because he only did occasional jobs for him and he was not a permanent employee.

Regarding [redacted] affidavit, counsel asserts that the [redacted] address belongs to the applicant's other brother, [redacted]. Counsel claims that the applicant would reside at the [redacted] address on weekdays because this residence was closer to his employment, and on the weekends, the applicant would reside with his other brother, [redacted]. Counsel contends, "hence there is no contradiction as to where he lived from 1981 to 1988 because he lived at both locations." Counsel provides a Deed of Trust, a Quitclaim Deed and three Grant Deeds as evidence of ownership of property located in Long Beach and Wilmington, California.

It is noted that the Deed of Trust and two of the Grant Deeds that list [REDACTED] name as the owner is for property located in Long Beach and not Wilmington. It is further noted that the deed indicates that [REDACTED] owned property at [REDACTED] whereas the applicant claims he lived with [REDACTED] at [REDACTED]. The remaining Grant Deed list the applicant's other brother, [REDACTED] as the owner of the property at [REDACTED] Wilmington as of February 5, 1979. It is also noted that at the time the applicant filed his Form I-687 application, the applicant submitted an affidavit dated July 21, 1990 from [REDACTED] who indicated that the applicant resided with him from November 1981 to September 1985.

Counsel submits a letter dated September 21, 2004 from [REDACTED], who reaffirmed his claim that the applicant resided with him at his residence on [REDACTED] Wilmington from 1981 to 1985. [REDACTED] asserted that the applicant would reside at his home on the weekdays and on the weekends, he would reside with his other brother, [REDACTED] at [REDACTED]. [REDACTED] asserted that he recommended the applicant for employment to Mr. [REDACTED] and Mr. [REDACTED] was a good friend of his [REDACTED] also attested to the applicant's employment with [REDACTED] and based his knowledge on having picked the applicant up from this place of employment on several occasions. It is noted that the applicant referred to his boss at Mexicmach as [REDACTED] and not as [REDACTED].

Counsel statements on appeal have been considered, but they do not overcome the numerous discrepancies noted in the director's decision and above. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although the applicant submitted some evidence, contemporaneous evidence, it relates to only a portion of the requisite period. Further, much of the content of the affidavits is inconsistent with other evidence in the record. The applicant submitted two items from a former landlord. In an affidavit notarized July 20, 1990, [REDACTED] stated that he rented property located at [REDACTED] to the applicant. In a statement dated November 11, 2001, a [REDACTED] stated that the applicant had resided at his property, 1135 [REDACTED] from November 1985 to September 1998. It appears that [REDACTED] and [REDACTED] are one and the same, yet the surnames are different. Clearly, the affiant would know the proper spelling of his own name.

The evaluation of the applicant's claims is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are contradictory. The applicant provided numerous affidavits from his relatives. These affidavits were considered but they were given less evidentiary weight than more objective evidence. Accordingly, 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.