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



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 327 60450

Office: LOS ANGELES

Date: NOV 02 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, Los Angeles, California, 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 abused her discretion in denying the application because the adjudicating officer "disregarded original documents presented" that corroborated the applicant's presence in the United States 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. 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 petitioner 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 applicant stated on his Form I-687, Application for Status as a Temporary Resident, that he first entered the United States in November 1981.

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 July 14, 1984 statement from [REDACTED] office manager of Time Zone, in which he certified that the applicant worked at the company as a warehouse worker from December 8, 1981 until July 12, 1984. The letter indicated that the applicant was paid on a cash basis. The letter does not indicate whether the information was taken from official company records and does not indicate the applicant's address at the time he worked for the company. 8 C.F.R. § 245a.2(d)(3)(i). The record reflects that the district office was unable to call to complete a telephone call to Time Zone at the number listed on the letterhead. The applicant submitted no evidence such as work schedules, pay receipts or other acknowledgement of payment, or similar documentary evidence to corroborate his employment with Time Zone.
2. A November 18, 1981 month to month lease agreement for property located at [REDACTED] in Bakersfield, California. The lease listed the applicant and two others as the lessees of the property. The applicant submitted no rent receipts, utility receipts, canceled rent checks or similar documentary evidence to verify his tenancy at this address.
3. A January 10, 1991 affidavit from [REDACTED] in which he stated that the applicant is the younger brother of one of his old friends [REDACTED] stated that the applicant has been in contact with him since 1981. [REDACTED] stated that the applicant resided at [REDACTED] from November 1981 until July 1984, and at [REDACTED] from July 1984 until September 1990. In a December 4, 1990 letter, [REDACTED] stated that he was the owner of Good 'N' Natural Nutrition in LaPuente, California and that the applicant worked for him as a cashier from August 1, 1987 to December 4, 1990. [REDACTED] stated that the applicant worked 8.5 hours per day and was paid on a cash basis. As with the applicant's other employers, [REDACTED] does not cite the source of the information that he relied upon in his letter and does not indicate the applicant's address at the time he worked for the company. *Id.* The applicant submitted no evidence such as work schedules, pay receipts or other acknowledgements of payment, or similar documentary evidence to corroborate his employment with the company. The record reflects that the applicant was unable to provide the district office with current contact information for [REDACTED].
4. A January 7, 1991 sworn statement from [REDACTED] in which he stated that the applicant has been residing continuously in the United States since November 1981, and that he and the applicant drove to Canada in July 1987 and returned the same month. According to the record, the applicant stated that he was unable to provide current contact information for [REDACTED].
5. A January 30, 2004 letter from [REDACTED] in which he stated that he has known the applicant for over 30 years, and that when the applicant arrived in the United States in 1981, he got in touch with [REDACTED].
6. A January 30, 2004 affidavit from [REDACTED] in which he stated that the applicant is his relative, and that the applicant called him upon the applicant's arrival in the United States in 1981, and that the applicant moved to Los Angeles in 1984.
7. A July 6, 1987 "Letter of Experience" from [REDACTED], manager of East West Distributors in Los Angeles, California, in which he certified that the applicant worked for the company as an inventory clerk from July 15, 1984 to July 5, 1987. [REDACTED] stated that the applicant worked 40 hours per week and was paid \$4.25 per hour. The letter does not indicate whether or not the information was taken from official company records and did not otherwise identify the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. *Id.* The record reflects that there was no answer at the telephone number provided when

the district office attempted to verify this information. The applicant submitted no evidence such as work schedules, pay receipts or other acknowledgements of payment, or similar documentary evidence to corroborate his employment with the company.

8. A July 20, 1984 month-to-month lease agreement for property located at [REDACTED] in Valinda, California. The applicant is identified as the sole lessee. The applicant submitted no rent receipts, canceled rent checks or other documentary evidence to corroborate his tenancy at this address.

Counsel asserts that the adjudicating officer failed to consider the original rental agreements and employment letters provided by the applicant, and that these documents and the affidavits of those willing to speak with immigration officials were sufficient to establish the applicant's burden of proof. We note that the adjudicating officers requested the original rental agreements and not the carbon copies provided by the applicant. Therefore, counsel's assertion that the district office ignored the original rental agreements is without merit.

Further, the record reflects that the district office attempted, with no success, to verify the applicant's employment history. Counsel asserts that these companies are no longer in business and their failure to provide information as required by the regulation "was most likely because the alien and the employers were unaware that such information was necessary." Counsel submits no evidence to support this assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the dates of the letters are significant, as they are dated shortly after the applicant's employment with the companies terminated. This raises questions as to the purpose of the documents, and, if they were drafted for immigration purposes, does not explain the failure to include all of the information required by the regulation.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided by the applicant shall depend on the extent of the documentation, its credibility *and* its amenability to verification. The district office could not verify the applicant's employment information, and the applicant provided no corroborative documentary evidence of his employment with any of the companies for which he stated that he worked. We cannot concur with counsel's assumption that the companies "most likely did not keep record" of the salary payments that it made to the applicant in cash. The amount of money that was allegedly paid to the applicant and the number of hours that he allegedly worked, are significant amounts not have been accounted for in some manner in business records. Further, with the exception of the lease agreements, the applicant submitted no contemporaneous documentation of his presence and residency in the United States.

Accordingly, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he resided continuously in the U.S. for the required period.

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