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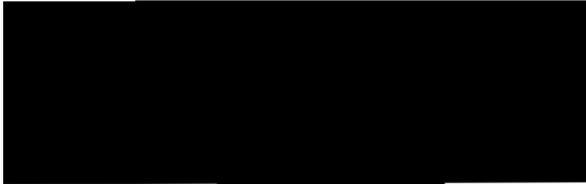
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: DALLAS Date: SEP 05 2006
MSC 02 187 60100

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, 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 asserts that the director erred in her decision as the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues that the regulation at 8 C.F.R. § 245a.(2)(d)(4)(vi)(E) provides the applicant to submit letters/affidavits to establish his residence claim.

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:

- A statement dated February 27, 1990 from [REDACTED] of Rule, Texas, who indicated that the applicant was in his employ in 1985 and 1986.
- Affidavits from [REDACTED] of Wichita Falls, Texas, who indicated that they have known the applicant since December 1981.
- An affidavit from [REDACTED] of Wichita Falls, Texas, who indicated that he has personally known the applicant since December 1981, and he has remained in contact with the applicant since that time.
- Affidavits from [REDACTED] of Wichita Falls, Texas, who indicated that he first met the applicant on Christmas day in December 1981, and attested to applicant's residence at [REDACTED] at that time. Mr. [REDACTED] asserted that he has remained friends with the applicant since that time.
- An affidavit from [REDACTED] of Wichita Falls, Texas, who indicated that he met the applicant through the applicant's brother [REDACTED] in December 1981. Mr. [REDACTED] asserted that the applicant resided with his brothers at [REDACTED] Wichita Falls, Texas.
- An affidavit from [REDACTED] of Wichita Falls, Texas, who indicated that he has known the applicant since December 1981, and attested to the applicant's residence with his brothers at [REDACTED] Wichita Falls, Texas at that time. Mr. [REDACTED] asserted that he has remained in contact with the applicant since that time.
- An affidavit from [REDACTED] of Wichita Falls, Texas, who indicated that he met the applicant through his brothers, [REDACTED] and [REDACTED] in December 1981 at their home at [REDACTED] Wichita Falls, Texas. Mr. [REDACTED] asserted that he has remained in contact with the applicant since that time.
- An affidavit from an affiant (name is indecipherable) of Wichita Falls, Texas, who indicated that [s]he has known the applicant since December 31, 1981, and attested to the applicant's residence with his brother, [REDACTED]. The affiant based his/her knowledge on having employed [REDACTED] at the time.
- Letters dated February 4 and 10, 2003 from [REDACTED] of Wichita Falls, Texas, who indicated that he has known the applicant since 1981. [REDACTED] asserted that the applicant was in his employ at [REDACTED] from 1983 to 1985. [REDACTED] indicated the applicant's duties as cleaning the shop to general labor.
- A letter dated March 8, 2004 from [REDACTED], pastor of Our Lady of Guadalupe Church in Wichita Falls, Texas, who indicated that the applicant arrived in the United States at the age of ten in 1981 and resided with his brother, [REDACTED]. [REDACTED] further indicated that the applicant did not attend school in the United States, and "worked as a teenager for [REDACTED] from 1983-1985 according to a sworn notarized statement included in your file."
- An affidavit from [REDACTED] of Electria, Texas, who indicated that he has known the applicant since November 1981, and has remained in contact with the applicant since that time.

- Affidavits from [REDACTED] and [REDACTED] of Wichita Falls, Texas, who indicated that they have known the applicant since 1981, and have remained friends with the applicant since that time.

The director, in denying the application, informed the applicant that contact with the office manager of Our Lady of Guadalupe Church revealed that [REDACTED] was not the pastor of the church until 1990. Therefore, [REDACTED] could not have had personal knowledge of the applicant's residence during the requisite period. The office manager further informed Citizenship and Immigration Services (CIS) that the church had no records of the applicant's attendance or registration during 1981 through 1988. The applicant was also informed that Mr. [REDACTED]'s employment letter did not meet the regulatory requirements and was not credible as the applicant would have been 12 years old at the time of employment. It must be noted that counsel, on appeal, has not addressed these issues. Counsel provides copies previously submitted documents in support of the appeal.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his or her knowledge for the testimony provided. The AAO, however, does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982.

The applicant has submitted affidavits from several affiants who claimed that the applicant resided with his brother, [REDACTED] since his 1981 entry into the United States. However, no documentation from [REDACTED] has been submitted to corroborate the affiants' testimonies. As such, the affidavits have little probative value or evidentiary weight. Except for [REDACTED] the remaining affiants all claimed to have known the applicant since 1981, but provided no address for the applicant during the period in question.

Mr. [REDACTED] in his affidavit, attested to knowing the applicant since November 1981; however, the applicant claimed to have entered the United States in December 1981. This discrepancy raises serious questions regarding the authenticity of Mr. [REDACTED] affidavit. Mr. [REDACTED] documentation also raises questions to its authenticity, as the applicant did not claim any employment during this time-period on his Form I-687 application.

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.