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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

MSC 01 310 61014

Office: DALLAS

Date: **SEP 14 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, Dallas, Texas, 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 asserts that the applicant has established by a preponderance of evidence that he was present and living in the United States prior to 1982. Counsel further asserts that Citizenship and Immigration Services (CIS) failed to accord any weight to the declarations and affidavits submitted in support of the application and failed to explain its conclusion that a purchase certificate submitted by the applicant was altered. Counsel submits another copy of the certificate of purchase and copies of internal memoranda on adjudicating evidence under the LIFE Act from the legacy Immigration and Naturalization Service.

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 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)(v)(L).

On a questionnaire to determine class membership, the applicant claimed to have entered the United States without inspection in 1980. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on May 23, 1990, the applicant did not claim any residences during the

required period, listing his first residence in May 1988. The applicant claimed to have worked for [REDACTED] from 1985 until the date of the Form I-687 application.

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

1. A copy of a residential lease agreement entered into between the applicant and [REDACTED] for a room and a bath. The lease agreement was purportedly effective from February 28, 1980 through February 1981. Mr. [REDACTED] also signed a June 27, 1990 statement in which he stated that the applicant "lived in [his] property located at [REDACTED] in Whittier, Ca. since February 1980."
2. A June 12, 1990 sworn affidavit from [REDACTED] in which she stated that she has known the applicant since 1980 and that they are good friends. Ms. [REDACTED] did not indicate the circumstances of her initial acquaintance with the applicant and did not indicate that he lived in the United States during the required period. In a June 6, 1990 statement, Ms. [REDACTED] stated that she knew of the applicant's trip to Mexico in 1987 because she took him to the bus depot.
3. A May 31, 1990 sworn affidavit from [REDACTED] in which he stated that he has known the applicant since June 1980 when they met as members of the Peruvian [sic] Club."
4. A February 1, 1981 sales receipt for tires, showing the applicant as the buyer with an address in Whittier, California.
5. Copies of rental receipts for March and April 1981, and September and October 1982, for [REDACTED]
6. A "certificate of purchase" from "The Broadway" for a stereo. The receipt shows a purchase date of April 30, 1981. However, the date of the version of the form is November 1988. On appeal, counsel questions the director's determination that the certificate was altered and states that the applicant "maintains that [] all documents are genuine and unaltered." The document on its face, however, reflects that it is not a genuine receipt, as the version of the form is dated subsequent to the purported sales date. This raises doubts about the applicant's credibility. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).
7. An October 16, 2003 sworn statement from [REDACTED] in which he stated that the applicant worked for his company, [REDACTED], "as a tow truck driver assistant from January 1, 1982 until December 15, 1986. Mr. [REDACTED] indicated that the applicant was compensated at the rate of \$75 per week, tips and room and board at [REDACTED] in Los Angeles. This conflicts with other evidence in the record indicating that the applicant lived and paid rent at [REDACTED] in Whittier. Additionally, the applicant did not list [REDACTED] as an employer at any time during the required period. On appeal, counsel states, "Probably because he was an independent sales person and not a full time employee, [the applicant] also worked from time to time for [REDACTED] owner of [REDACTED]." Nothing in the record supports counsel's assumption. 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 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, counsel's explanation does not in any way purport to resolve the conflicting

statements regarding the applicant's living arrangements. 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. at 591-92.

8. A June 11, 1990 letter from [REDACTED] National Sales Manager for [REDACTED], indicating that he has been a friend of the applicant's for "the past 5 or 6 years" and that the applicant "helped me in my business from time to time." Mr. [REDACTED] did not indicate the circumstances of his initial acquaintance with the applicant, that the applicant resided in the United States during the qualifying period, or that the applicant helped him in his business during the requisite period. In a letter dated October 19, 1989, Mr. [REDACTED] stated that the applicant "represent[ed] [REDACTED] as [a salesman] of our English Learning Course" at swap meets. The letter did not indicate the time frame that the applicant had been selling the materials at swap meets or that the swap meets were in the United States.

Although the applicant claimed to have worked for [REDACTED] from 1985, the record contains no documentary evidence to support this. Counsel asserts that the applicant "worked as an independent sales person, a contractor rather than an employee, indicating that it is less likely that an official record would remain." As discussed above, however, the earliest time frame indicated by Mr. [REDACTED] for the applicant's work with the company was 1989.

The conflicting information and the obviously false "certificate of purchase" from "The Broadway" severely undermines the applicant's credibility and all other evidence in the record. *Id.* Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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