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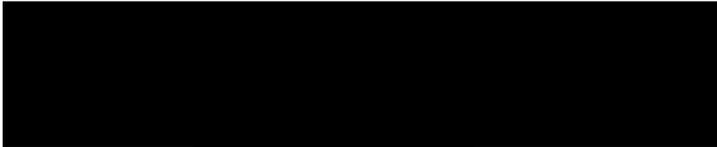
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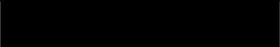
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date:

DEC 14 2007

MSC 02 243 67220

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

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, Chicago, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988. Specifically, the director determined that although in some cases affidavits alone may suffice, the affidavits submitted in support of this application were insufficient to satisfy the applicant's burden of proof in these proceedings.

On appeal, counsel contends that the applicant established by a preponderance of the evidence that he was eligible to adjust status to that of legal permanent resident. In support of this contention, counsel re-submits a brief and the previously-submitted documentary evidence.

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).

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).

In the affidavit for class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States in 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant claimed to live at the following addresses during the requisite period:

January 1981 to December 1986:

January 1987 to June 1990:

In an attempt to establish continuous unlawful residence in the United States since before January 1982 through 1988, the applicant furnished the following evidence:

- (1) Affidavit dated June 7, 1990 from [REDACTED] claiming that he has personally known the applicant since May 1981. The affiant claims that he has personal knowledge that the applicant resided in the United States at [REDACTED] Chicago, IL from January 1981 to December 1986 and [REDACTED] Gary, IN from January 1987 to present. Finally, the affiant claims that he worked with the applicant at [REDACTED] from May 1981 until 1987, and they have remained friends since that time.
- (2) Affidavit dated June 7, 1990 from [REDACTED], claiming that he has personally known the applicant since March 1981. The affiant claims that he has personal knowledge that the applicant resided in the United States at [REDACTED] Chicago, IL from January 1981 to December of an unspecified year and [REDACTED] Gary, IN from January 1987 to present. Finally, the affiant claims that he has been a friend of his brother, and that he first met the applicant in January 1981 when he came to live with his brother in South

Chicago. The applicant does not clarify why he provides two conflicting dates (i.e., January 1981 and March 1981) at which time he claims to have first met the applicant.

- (3) Affidavit dated June 6, 1990 from [REDACTED], brother of the applicant, claiming that the applicant lived with him from January 1987 to the present at [REDACTED], Gary, Indiana.
- (4) Affidavit dated June 6, 1990 from [REDACTED], brother of the applicant, claiming that the applicant lived with him from January 1981 to December 1986 at [REDACTED] Chicago, IL.
- (5) Letter dated November 3, 2003 from [REDACTED], Pastor of St. Kevin's Church in Chicago, IL, claiming that the applicant was a former parishioner of St. Kevin's between 1981-1985.
- (6) Affidavit dated November 5, 2003 from [REDACTED] claiming that he has known the applicant since 1981. He claims to have met the applicant through an unidentified community church and that the applicant did some jobs for him around his home. He claims that they kept in touch since the applicant moved to Indiana. It is noted that attempts by CIS to contact the affiant were unsuccessful.
- (7) Letter dated November 13, 2003 from [REDACTED], who claims he met the applicant at an unidentified church in the South Chicago area in 1981. This document appears to have the signature of a notary or person of similar capacity, but there is no stamp or seal.
- (8) Letter dated November 13, 2003 from [REDACTED] who claims he has known the applicant since 1982 and that they played baseball together. The affiant did not disclose the league or association for which they played.
- (9) Paystub from Complete Building Maintenance Co. for the period ending September 7, 1986.
- (10) Paystubs from BCS Foods Incorporated, located in Woodland Hills, California, for the periods ending June 15, 1988, July 1, 1988, July 15, 1988, August 15, 1988, September 15, 1988, October 1, 1988, October 15, 1988, November 1, 1988, and December 15, 1988.
- (11) Paystubs from K&T Embers Foods, Inc. for the periods ending January 24, 1987, January 31, 1987, February 7, 1987, February 14, 1987, February 21, 1987, February 28, 1987, March 7, 1987, March 14, 1987, March 21, 1987, March 28, 1987, April 4, 1987, April 11, 1987, April 18, 1987, April 25, 1987, May 16, 1987, May 23, 1987, May 30, 1987, June 6, 1987, June 13, 1987, June 20, 1987, June 27, 1987, July 4, 1987, July 18, 1987, July 25, 1987, August 1, 1987, August 8, 1987, August 15, 1987, August 22, 1987, August 29, 1987, September 5, 1987, September 12, 1987, September 19, 1987, September 26, 1987, October 3, 1987, October 10, 1987, October 17, 1987, October 24, 1987, November 21, 1987, November 28, 1987, December 19, 1987, December 26, 1987, January 9, 1988, January 16, 1988, January 23, 1988, January 30, 1988, February 6, 1988, February 20, 1988, and February 27, 1988.

On January 16, 2004, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, as well as

maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. In a response filed on February 13, 2004, counsel contended that the director erroneously analyzed the evidence and held the applicant to an inappropriate standard of proof. Counsel claimed that the applicant had established by a preponderance of the evidence that he was eligible for the benefit sought, and resubmitted the previously-submitted documentation.

The director denied the application on April 11, 2005, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988, or that he had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Although the director noted the applicant's numerous affidavits of acquaintance, the director noted there was no evidence of the applicant's entry prior to January 1, 1982 and insufficient evidence of his unlawful and continuous presence in the United States through 1988.

On appeal, counsel again asserts that the director applied the wrong standard and claims that the applicant has in fact satisfied his burden of proof. Upon review, the AAO concurs with the director's decision.

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 quality 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 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.

The *Matter of E-- M--* decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims he entered the United States in 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. In support of his entry and his continuous unlawful

presence in the United States from 1982 to 1988, the applicant relies on numerous affidavits, including one from his brother, [REDACTED], who claims that the applicant lived with him from January 1981 to December 1986 at [REDACTED], Chicago, IL. While this claim corroborates the applicant's claim that he resided at this address during this period, there is no independent evidence, such as rent receipts, leases, utility bills, or other documents evidencing payment of rent, utilities and/or a mortgage during this period. While it is acknowledged that the applicant was only fourteen years old when he allegedly entered the United States, it is not unreasonable to expect that his brother would be able to provide supporting documentation to corroborate these claims.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintance have been submitted, the documents are inadequate and do not contain enough information to support a credible finding that the applicant was continually maintaining an unlawful status in the United States between 1982 to 1988.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of the applicant's continuous unlawful status between 1982 and 1988 fall far short of meeting the above criteria. For example, the affidavits of [REDACTED] and [REDACTED] claim that they met the applicant in 1981, but provide no additional information with regard to the nature of their acquaintance. Additionally, the affidavit of [REDACTED] claims that he met the applicant in March 1981, but later states in the same document that he met him in January of 1981. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the letter from [REDACTED] of St. Kevin's Church, which claims that applicant was a former parishioner between 1981-1985, fails to satisfy the regulatory requirements. The letter omits the residence of the applicant during the period of his alleged membership, and further omits the origin of the

information provided and the manner in which the pastor is acquainted with the applicant, as required by 8 C.F.R. §§ 245a.2(d)(3)(v)(D), (F) & (G).

Furthermore, the statements provided by [REDACTED] and [REDACTED] provide minimal information regarding the nature of their relationships and the basis of their knowledge of the applicant. Merely claiming that they know him through an unspecified church or baseball league in South Chicago is not enough to satisfy the applicant's burden of proof in these proceedings. The omission of the applicant's address at the time of their acquaintance, as well as a statement regarding period of the applicant's continuous residence, render these statements less than persuasive. More importantly, the brief and un-notarized statements of [REDACTED] and [REDACTED] render these statements even less probative. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

The applicant has likewise failed to establish his continuous physical presence in the United States from November 6, 1986 to May 4, 1988. The applicant submits a sufficient amount of paystubs which demonstrate his continuous employment for most of 1987 and portions of 1988. Only one paystub is submitted for 1987, dated September 6, 1987 and issued by Complete Building Maintenance Co. No information regarding this company is provided, nor is it listed in his employment history on Form I-687. Additionally, a substantial portion of paystubs for the period from June to December 1988 are issued by BCS Foods Incorporated, located in Woodland Hills, California. There are two problems with these documents. First, BCS Foods Incorporated, like Complete Building Maintenance Co., is not listed in the applicant's employment history on Form I-687. Second, the fact that BCS is located in California, when the applicant claims to have resided in Indiana during this period, raises doubts regarding the credibility of the applicant's claims. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Absent a letter from BCS explaining the nature of this employment relationship, the AAO is left to question the credibility of these documents. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In addition, the numerous pay stubs issued by K & T Embers Food, Inc. for the period from January 1987 to February 1988 omit the name of the employee. As a result, the AAO cannot determine if in fact these paystubs represent wages paid to the applicant.

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status from January 1, 1982 through 1988. Therefore, 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.